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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 FLORENCIO MENDOZA JAVA,

4 Plaintiff,

5 v.

16 Civ. 6691 (JLC)  
Bench Trial

6 EL AGUILA BAR RESTAURANT  
7 CORP., LAS BENDERAS SPORTS BAR  
8 CATERING LOUNGE CORP.,  
9 SANTIAGO ALMONTE and JUAN  
10 ALMONTE,

11 Defendants.

-----x

12 New York, N.Y.  
13 March 1, 2018  
14 9:30 a.m.

15 Before:

16 HON. JAMES L. COTT,

17 Magistrate Judge

18 APPEARANCES

19 MICHAEL FAILLACE & ASSOCIATES PC  
20 Attorneys for Plaintiff Java  
21 BY: SARA J. ISAACSON  
22 SHAWN R. CLARK

23 DELMAS A. COSTIN JR  
24 Attorney for Defendants

25 -Also Present-  
XXX, Interpreter (Spanish)  
xxx, Interpreter (Spanish)

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1 (Case called)

2 MS. ISAACSON: Good morning, your Honor.

3 Sara Isaacson for Florencio Mendoza Java, the  
4 plaintiff, and I have today with me Shawn Clark.

5 THE COURT: Good morning, Ms. Isaacson. Good morning  
6 Mr. Clark.

7 And this is your client?

8 MS. ISAACSON: Yes, your Honor.

9 THE COURT: Good morning, Mr. Mendoza. You may be  
10 seated.

11 MR. COSTIN: Delmas Costin for the defendant, Juan  
12 Almonte an El Aguila Bar Restaurant.

13 THE COURT: Good morning, Mr. Costin.

14 Good morning, Mr. Almonte. You may be seated as well.

15 Why do I have defendant's exhibits sitting in front of  
16 me? We're a little ahead of the game. They haven't been  
17 offered or received in evidence yet. Why don't you hold on to  
18 them until we get there?

19 MR. COSTIN: Yes, your Honor.

20 THE COURT: I think the first order of business is to  
21 address the question of Mr. Santiago Almonte and the scope of  
22 his testimony in light of the letters that I asked counsel to  
23 submit.

24 I have reviewed those letters, the February 20 letter  
25 from Ms. Isaacson and the February 20 letter from Mr. Costin

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1 that are Docket Nos. 51 and 52 in the case and conducted some  
2 independent research as well.

3 And my conclusion is that Mr. Santiago Almonte's  
4 testimony should be limited to damages. I say that because my  
5 understanding of the law is that the general rule in situations  
6 in which a defaulting and a non-defaulting defendant are  
7 subject to joint and several liability is that it would be  
8 appropriate to enter a default as against Mr. Santiago Almonte  
9 and the other corporate defendant, the Las Banderas Sports Bar  
10 because they have never appeared in this action, and they are,  
11 in fact, in default, it would be appropriate to enter a default  
12 pursuant to Rule 55(a) but not a judgment, and the reason that  
13 I encourage plaintiffs from forestalling any formal motion  
14 practice with respect to those defaulting defendants is to  
15 ensure that there wouldn't be any inconsistent judgments.

16 What I mean in a nutshell is a Rule 55(a) default  
17 could and should be entered with respect to those two  
18 defendants but a Rule 55(b) default judgment should not yet be  
19 entered as to those defendants because if the appearing  
20 defendants prevail at this trial, then my understanding of the  
21 law would be that all defendants, including the defaulting  
22 defendants, effectively would be exonerated.

23 So that is where I come out in that regard. If,  
24 Mr. Costin, you wish to call Mr. Santiago Almonte as a witness  
25 at this proceeding, I would treat his testimony as the

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1 equivalent of any submission you would make on an inquest such  
2 that he would be testifying about damages and damages only.  
3 Liability will be assumed as against him and the corporate  
4 defendant as they have not yet appeared.

5 So, if the remaining defendants prevail, Mr. Santiago  
6 Almonte and Las Banderas Sports Bar will be exonerated, but if  
7 Mr. Mendoza prevails on the merits, then judgment is going to  
8 be entered as to all defendants, and part of our proceeding  
9 today will, of course, address damages both with respect to  
10 testimony from Mr. Mendoza and the appearing defendants. And  
11 to the extent, Mr. Costin, you wish to call the defaulting  
12 defendants, you may do so, but only for the purposes of their  
13 disputing damages.

14 So that is where I come out. Is that clear to  
15 everybody in terms of how we're proceeding?

16 Ms. Isaacson?

17 MS. ISAACSON: Yes, your Honor.

18 THE COURT: Mr. Costin, is that clear?

19 MR. COSTIN: Yes, your Honor.

20 THE COURT: OK. So, that is by way of at least one  
21 preliminary.

22 Are there any other preliminary issues that counsel  
23 want to raise before we proceed?

24 MR. COSTIN: Yes, your Honor. I have one question.  
25 Mr. Santiago Almonte is present in the courtroom. During the

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1 testimony, is he allowed to stay in the courtroom since he is a  
2 defendant in this matter?

3 THE COURT: Do you have any objection to that?

4 MS. ISAACSON: We don't necessarily have an objection  
5 as to Santiago, but with respect to the third-party witness  
6 Mr. Pichardo, who is sitting here, we would ask that he leave  
7 the courtroom before any testimony begins.

8 MR. COSTIN: I agree with that, your Honor.

9 THE COURT: Mr. Santiago Almonte can remain for the  
10 duration of all proceedings, but the non-party witnesses should  
11 be excluded consistent with what I think is general practice in  
12 this courthouse.

13 MR. COSTIN: Yes.

14 THE COURT: OK. Any other preliminaries?

15 MR. COSTIN: And the other matter is Ms. Carasquillo,  
16 I guess we can address it later --

17 THE COURT: Why don't we see where we are at the end  
18 of the day, if we are otherwise finished or we're not, and  
19 we're coming back tomorrow and you're reporting to me on where  
20 all that stands. Let's take all the other testimony first and  
21 then we'll address it. Of course, I'm aware of the issue with  
22 you, but let's see how the trial shakes out. You may decide  
23 you want to call her; you may decide you don't want to call  
24 her, and we'll deal with that.

25 MR. COSTIN: Thank you, your Honor.

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1 THE COURT: Ms. Isaacson or Mr. Clark, do you have any  
2 other preliminary issues you want to raise?

3 MS. ISAACSON: Not at this time, your Honor.

4 THE COURT: Can I just ask for purposes of how we're  
5 proceeding, because I think there was some inquiry to the Court  
6 and, that is, the interpreters that are present today, are they  
7 certified in some fashion or what sort of voir dire, if any,  
8 should I conduct to satisfy myself that they are appropriately  
9 trained, certified, and/or appropriate to perform the function  
10 that they both are.

11 MS. ISAACSON: They are court certified, your Honor.  
12 We agreed with the cost so that we could have the certified  
13 interpreters.

14 THE COURT: So the interpreters here today are  
15 certified and the parties have worked together to ensure --

16 MR. COSTIN: That's correct, your Honor.

17 THE COURT: Do you all want to make opening statements  
18 of any kind at the bench trial? I'm happy to have them if  
19 they're short, but you're not obligated to. I'm much more  
20 interested in taking testimony because that's what the case is  
21 ultimately about, but whatever you prefer in that regard.

22 Ms. Isaacson, what is your pleasure?

23 MS. ISAACSON: If Mr. Costin is willing to waive  
24 opening statements, then we will as well. If he is going to  
25 make an opening statement, then we would.

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1 THE COURT: Do you both want to or do you both want to  
2 waive them?

3 MR. COSTIN: Your Honor, I'll waive it.

4 THE COURT: Ms. Isaacson, call your first witness.

5 MS. ISAACSON: Your Honor, we'd like to call  
6 Mr. Florence Mendoza Java.

7 THE COURT: Mr. Java, please come forward to the  
8 witness stand.

9 Yes, Mr. Pichardo should leave at this time.

10 FLORENCIO MENDOZA JAVA,

11 called as a witness by the Plaintiff,

12 having been duly sworn, testified through the interpreters

13 as follows:

14 DIRECT EXAMINATION

15 BY MS. ISAACSON:

16 THE COURT: You may be seated.

17 Ms. Isaacson, you may proceed

18 Q. Good morning, Mr. Mendoza Java. Did you ever work at a  
19 place called El Aguila?

20 A. I'm sorry, counselor. Can you repeat the question?

21 Q. Yes. Did you ever work at a place called El Aguila?

22 A. Yes.

23 Q. What kind of business was El Aguila?

24 A. A restaurant bar and exotic dancers.

25 Q. Where was El Aguila located?

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1 A. In the Bronx in New York.

2 Q. What kind of items did El Aguila offer for sale?

3 A. Food and liquor.

4 Q. When did you begin working at El Aguila?

5 A. 2008.

6 Q. When did you stop working at El Aguila?

7 A. July of 2016.

8 Q. What did you do at El Aguila?

9 A. Cleaning, cooking, doing deliveries.

10 Q. Did you ever work anywhere else besides El Aguila at that  
11 time?

12 A. Yes.

13 Q. Where else did you work at that time?

14 A. I worked at Las Banderas at the end of 2015 until July of  
15 2016.

16 Q. What kind of business was Las Banderas?

17 A. A restaurant bar.

18 Q. Where was Las Banderas located?

19 A. In the Bronx, New York.

20 Q. What did you do at Las Banderas?

21 A. Cleaning, and receiving deliveries.

22 Q. How did you get your job at El Aguila?

23 A. I was out looking for work, and I went inside the El Aguila  
24 Restaurant, and I asked a woman there.

25 THE COURT: Can I interrupt? Just go back for a



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1 minute. You said you began working at Las Banderas at the end  
2 of 2015. Can you be more specific? Do you remember what  
3 month, for example, you began working there?

4 THE WITNESS: The end of 2015.

5 THE COURT: Does that mean December?

6 THE WITNESS: Yes.

7 THE COURT: All right. And when you were working  
8 there, were you working at both El Aguila and Las Banderas at  
9 the same time or did you change employers?

10 THE WITNESS: No. I was working at El Aguila from  
11 10:00 until 8:00, six days a week, and then one day a week I  
12 was working from 10:00 until 4:00 at El Aguila, and from 4:00  
13 until 9:00 at Las Banderas.

14 THE COURT: So he was working seven days a week during  
15 this period of time?

16 THE WITNESS: No, six days.

17 THE COURT: I thought he just said six days a week  
18 from 10:00 to 8:00, and then one day from 10:00 to 4:00 and the  
19 other 4:00 to 9:00 was at Las Banderas. Did I misunderstand?

20 THE WITNESS: No, five days. While I was working six  
21 days.

22 THE COURT: All right.

23 THE WITNESS: But one day -- I was working the same  
24 schedule, but one day I was working from 10:00 to 4:00 at  
25 El Aguila and then 4:00 to 9:00 at Las Banderas.

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1 THE COURT: Is the 4:00 to 9:00 period of time that  
2 you worked at Las Banderas the only time you worked there?

3 THE WITNESS: Yes.

4 THE COURT: So you worked at Las Banderas for five  
5 hours during the course of a week and you did that from  
6 December 2015 until July 2016?

7 THE WITNESS: Yes.

8 THE COURT: All right. Very well. Thank you.

9 You may proceed, Ms. Isaacson.

10 Q. I believe you were in the middle of answering how you got  
11 your job at El Aguila.

12 A. Yes. Well, I was out looking for work, and I went inside  
13 the El Aguila Restaurant. So I went and asked the person that  
14 was inside of there or, as we say, the girl in there, and then  
15 I was interviewed by Santiago Almonte.

16 Q. How did you get your job at Las Banderas?

17 A. Through Santiago Almonte.

18 Q. What do you mean by through Santiago Almonte?

19 A. Because he supervised or was in charge the of Banderas, and  
20 he would send me to do cleanup and receive purchases.

21 Q. Who is Santiago Almonte?

22 A. He was my employer.

23 Q. What were his responsibilities as your employer?

24 A. He was a supervisor, and he was in charge of paying me and  
25 giving me my schedules.

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1 Q. Who is Juan Almonte?

2 A. Juan Almonte is Santiago Almonte's brother, and they are  
3 partners, and he is also my employer or was my employer.

4 Q. And what were his responsibilities as your employer?

5 THE INTERPRETER: The interpreter would like to  
6 clarify a term.

7 A. He was in charge of paying me and in charge of finances;  
8 that is, that he was managing things.

9 Q. Who was in charge of El Aguila?

10 A. Santiago and Juan Almonte.

11 Q. Who was in charge of Las Banderas?

12 A. Santiago Almonte.

13 Q. Who set your schedules while you worked at El Aguila?

14 A. Santiago Almonte.

15 Q. Who paid you while you worked at El Aguila?

16 A. Santiago and Juan Almonte.

17 Q. Who set your schedules while you worked at Las Banderas?

18 A. Santiago Almonte.

19 Q. Who paid you while you worked at Las Banderas?

20 A. Santiago and Juan Almonte.

21 Q. What hours did you work at El Aguila in August 2010?

22 A. From 8:00 till 8:00.

23 Q. Is that 8:00 a.m. till 8:00 p.m. or something else?

24 A. From 8:00 a.m. till 8:00 p.m.

25 Q. How many days a week did you work in August of 2010?

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1 A. Six days.

2 Q. Did the hours that you worked at El Aguila ever change  
3 after August of 2010?

4 A. Yes.

5 Q. When did the hours that you worked at El Aguila change  
6 after August 2010?

7 A. In around July of 2012 working six days a week, five I was  
8 working during the day and one I was working at night.

9 Q. And in July 2012 when you worked five days, during the day  
10 what hours did you work at El Aguila?

11 A. From 8:00 till 8:00.

12 Q. And in July 2012 when the hours that you worked changed,  
13 what hours did you work when you worked at night at El Aguila?

14 A. From 7:00 p.m. until 5:00 a.m.

15 Q. Did the hours that you worked at El Aguila ever change  
16 again after July 2012?

17 A. Yes, July of 2013.

18 Q. How many days per week did you work when your hours changed  
19 in July 2013?

20 THE INTERPRETER: I'm sorry, counsel. How many days a  
21 week?

22 Q. How many days per week?

23 A. Six days.

24 Q. What hours did you work at El Aguila when your hours  
25 changed in July 2013?

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1 A. From 8:00 till 8:00.

2 Q. Is that 8:00 a.m. till 8:00 p.m. or something else?

3 A. From 8:00 a.m. until 8:00 p.m.

4 Q. Did the hours that you work at El Aguila ever change again  
5 after July 2013?

6 A. Yes.

7 Q. When did the hours that you worked at El Aguila change  
8 again after July 2013?

9 A. At the end of 2015, yes. December, right?

10 Q. And what hours did you work when your hours changed at the  
11 end of 2015?

12 A. I was working six days a week and from 10:00 until 8:00.

13 Q. When you say 10:00 until 8:00, is that 10:00 a.m. until  
14 8:00 p.m.?

15 A. Yes. Yes. I was working six days, five days from 10:00  
16 till 8:00 at El Aguila and one day from 10:00 till 4:00 at  
17 El Aguila and from 4:00 till 9:00 at Las Banderas.

18 Q. Was there any sort of time system at El Aguila to record  
19 when you came in in the morning?

20 A. No.

21 Q. Was there any sort of time system at El Aguila to record  
22 when you left work at the end of the day?

23 A. No.

24 Q. When you worked at El Aguila, did you have to keep a record  
25 of your time?

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1 A. No.

2 Q. When you worked at El Aguila, did you write by hand into a  
3 book or paper the time of your arrival?

4 A. No.

5 Q. Was there any sort of time system at Las Banderas Sports  
6 Bar to record when you came in in the morning?

7 A. No.

8 Q. Was there any sort of time system at Las Banderas Sports  
9 Bar to record when you left work at the end of the day?

10 A. No.

11 Q. When you worked at Las Banderas Sports Bar, did you have to  
12 keep a record of your time?

13 A. No.

14 Q. When you worked at Las Banderas Sports Bar, did you write  
15 by hand into a book or paper the time of your arrival?

16 A. No.

17 Q. At the time of departure when you were ready to go home,  
18 did you punch in a card?

19 A. No.

20 Q. Did anyone ever discuss pay with you when you first started  
21 working at El Aguila in 2008?

22 A. Yes, Santiago Almonte.

23 Q. What did Santiago Almonte tell you when he spoke to you  
24 about your pay?

25 A. That he was going to give me 225 a week.

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1 Q. Did you actually receive \$225 a week when you started  
2 working in 2008?

3 A. 225?

4 Q. Yes.

5 A. Yes.

6 Q. How were you paid when you first started working in 2008,  
7 by check or cash?

8 A. In cash.

9 Q. Did your salary ever change after 2008?

10 A. Yes, in 2010.

11 Q. How did your salary change in 2010?

12 A. 60 a day.

13 Q. Is that \$60 a day?

14 A. Yes.

15 Q. How were you paid when your salary changed in 2010, by cash  
16 or check?

17 A. In cash.

18 Q. Did your salary ever change again after 2010?

19 A. Yes, in 2012 in July.

20 Q. How did your salary change in July 2012?

21 A. I was making 65 a day and 80 at night.

22 Q. And how were you paid when your salary changed in  
23 July 2012, by check or cash?

24 A. In cash.

25 THE COURT: What do you mean by 80 at night?

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1 THE WITNESS: When I worked one day at night.

2 THE COURT: Do you want to follow up with some  
3 questions about that? I don't quite understand what it means  
4 to make 65 a day and 80 at night. What does that mean?

5 MS. ISAACSON: Sure.

6 BY MS. ISAACSON:

7 Q. When you say you were paid \$65 per day in July 2012, which  
8 days were you paid \$65 per day and which days were you paid \$80  
9 a day?

10 A. On Sundays when I would cook.

11 Q. On Sundays when you would cook, what would you receive in  
12 salary?

13 A. 80 per night.

14 Q. OK. And the other days a week that you worked in  
15 July 2012, what did you receive in salary?

16 A. 65 per day.

17 THE COURT: So was there one day a week where you made  
18 \$80 and the other days you made \$65? Is that what this means?

19 THE WITNESS: Yes.

20 THE COURT: Very well. Thank you.

21 Q. How were you paid when your salary changed in July 2012, by  
22 check or cash?

23 A. In cash.

24 Q. Did your salary ever change again after July 2012?

25 A. Yes, in 2013.



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1 Q. What month in 2013?

2 A. July.

3 Q. How did your salary change in July 2013?

4 A. I was making 65 per day.

5 Q. And \$65 per day?

6 A. Yes.

7 Q. How were you paid when your salary changed in July 2013, by  
8 cash or check?

9 A. Cash.

10 Q. Did your salary ever change again after July 2013?

11 A. Yes, in 2015 towards the end.

12 Q. How did your salary change at the end of 2015?

13 A. Yes. I was getting paid 30 hours by check, 8.75 an hour  
14 for 30 hours a week and \$95 cash.

15 THE COURT: I'm sorry to interrupt, but I just want to  
16 be clear for the record.

17 Mr. Mendoza, there was a period of time where you made  
18 \$65 per day except one day a week where you made \$80 a day, but  
19 that stopped and then you were just making \$65 a day for every  
20 day that you worked. Is that correct?

21 THE WITNESS: Yes.

22 THE COURT: When did you stop having the one day where  
23 you made \$80 a day?

24 THE WITNESS: In July 2013.

25 THE COURT: All right. Thank you.

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1 BY MS. ISAACSON:

2 Q. When you said you received \$95 in addition to the 8.75 per  
3 hour for the first 30 hours per week, that was \$95 per week,  
4 correct?

5 A. Yes.

6 Q. Who paid you?

7 A. Santiago and Juan Almonte.

8 Q. Did you have to sign a document showing that you received  
9 money?

10 A. No.

11 Q. Did you receive tips from customers for deliveries you  
12 made?

13 A. Yes.

14 Q. How often did you make deliveries?

15 A. I would usually do 20 deliveries per week.

16 Q. Approximately how long would each delivery take you to  
17 make?

18 A. 10 to 15 minutes.

19 Q. Did anyone tell you that the tips were supposed to offset  
20 your wages?

21 A. No.

22 Q. Did you report the amount of cash you made every day to the  
23 manager or owner of the restaurant?

24 A. No.

25 Q. As far as you know, did the restaurant keep track of the

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1 tips you made?

2 A. No.

3 Q. Did anyone explain to you at all about something called the  
4 tip credit?

5 A. No.

6 Q. When you worked at El Aguila, did you receive any documents  
7 saying how many hours you worked and how you were being paid?

8 A. No.

9 Q. When you worked at Las Banderas, did you receive any  
10 document saying how many hours you worked and how you were  
11 being paid?

12 A. No.

13 THE COURT: May I ask a question, Mr. Mendoza. You  
14 said you made about 20 deliveries per week. Is that right?

15 THE WITNESS: Yes.

16 THE COURT: Did you do that from 2008 until July of  
17 2016 or something else?

18 THE WITNESS: Yes, all the time.

19 THE COURT: All right.

20 BY MS. ISAACSON:

21 Q. Were you given a document when you started working at  
22 El Aguila stating what your pay rate would be?

23 A. No.

24 Q. Were you given a document when you started working at Las  
25 Banderas stating what your pay rate would be?

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1 A. No.

2 Q. Were you given such a document at any point while working  
3 at El Aguila?

4 A. No.

5 Q. Were you given any such document at any point while working  
6 at Las Banderas?

7 A. No.

8 MS. ISAACSON: No further questions.

9 THE COURT: All right. Mr. Costin.

10 MR. COSTIN: May I have one moment, your Honor?

11 THE COURT: Yes.

12 CROSS-EXAMINATION

13 BY MR. COSTIN:

14 THE COURT: Ready to proceed?

15 MR. COSTIN: Yes, your Honor. Thank you.

16 THE COURT: You may do so.

17 MR. COSTIN: Thank you, your Honor.

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. When you first went to El Aguila, you stated that you  
21 interviewed with Mr. Santiago Almonte. Is that right?

22 A. Yes.

23 Q. What did you understand your job duties to be? What did  
24 you expect to do?

25 A. Cleaning, deliveries in 2008, and to receive purchases.

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1 Q. Prior to working at El Aguila, did you work anywhere else?  
2 Had you worked anywhere else in New York City?

3 A. Yes.

4 Q. Where did you work, sir?

5 A. Near Yankees Stadium.

6 Q. What did you do?

7 A. Cook.

8 Q. Where?

9 A. La Taverna, that's the name.

10 Q. Is that on 149th Street?

11 A. No, near Yankee Stadium.

12 Q. Where near Yankee Stadium?

13 A. It's Walton Street and 161st Street.

14 Q. How long did you work there?

15 THE INTERPRETER: For the interpreter, how long?

16 MR. COSTIN: Yes.

17 MS. ISAACSON: Objection, your Honor.

18 THE COURT: What's the objection?

19 MS. ISAACSON: It's beyond the scope, and it's unclear  
20 where Mr. Costin is going.

21 THE COURT: I'm going to give him a little latitude,  
22 but you'd better bring it to connection in the next minute or  
23 two, Mr. Costin.

24 MR. COSTIN: Yes, sir.

25 A. Yes, what?

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1 MR. COSTIN: Repeat my question, please?

2 THE COURT: How long did you work at this place,  
3 La Taverna?

4 THE WITNESS: Approximately one year.

5 Q. When you worked at El Aguila, did anyone else have the same  
6 job title you had?

7 A. No.

8 Q. What was your job title? We didn't ask that.

9 A. I was in charge of cleaning, maintenance, receiving  
10 purchases and little by little work increased.

11 Q. Did anyone else have those duties besides you?

12 A. No.

13 Q. So is it fair to say that your job was important to  
14 El Aguila?

15 A. Right.

16 Q. And would El Aguila be able to function if you weren't  
17 there to do your job?

18 A. Yes.

19 Q. And you recognize that. You knew it was important for you  
20 to do your job to the best of your ability. Is that fair?

21 A. Yes.

22 Q. And you enjoyed doing your job because you stayed there for  
23 so long. You were there for at least eight years, right?

24 A. Right.

25 Q. Santiago Almonte trusted you to do your job. Would you

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1 agree with that?

2 A. Yes.

3 Q. And what about Juan Almonte, did he trust you to do your  
4 job?

5 A. Yes.

6 Q. And you did your job to the best of your ability. Is that  
7 true, or would you agree with that statement?

8 A. Of course, I did my job.

9 Q. And why is that, sir?

10 A. Because it was my obligation to be there and work.

11 Q. While you were there, did anyone else do deliveries that  
12 you're aware of at El Aguila?

13 A. Yes.

14 Q. Who?

15 A. Was hmm, what's his name. I do not remember the name.

16 Q. How many people besides you ever accepted deliveries at  
17 El Aguila while you worked there?

18 A. One, one more.

19 Q. I'm sorry, is that a total of two or a total of one other  
20 person?

21 A. Only one more person.

22 Q. Was this person a manager or was he a non-manager?

23 A. No. He would just make deliveries.

24 Q. He made deliveries or he accepted deliveries?

25 A. He would make them.

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1 Q. Did he work for El Aguila?

2 A. Yes.

3 Q. What else did this person do besides make deliveries?

4 A. He was somewhat -- he was in charge somewhat of helping me  
5 with the cleaning.

6 Q. When did this person work with you?

7 A. That was around 2013.

8 Q. When did this person stop working there?

9 A. Until it closed down.

10 Q. You had a nickname while you worked there, right?

11 A. Yes.

12 Q. What was your nickname?

13 A. Mexico.

14 Q. Who is Pedro Pichardo?

15 A. He was a person in charge in 2008, the manager.

16 Q. And he was in -- when did he work, do you know?

17 A. From -- do you mean the schedule or the dates?

18 Q. I want to know the years that he worked there.

19 A. He worked there from about 2008 till 2014.

20 Q. What was his schedule?

21 A. It was 8:00 in the morning to 8:00 at night.

22 Q. Was that his schedule from 2008 to 2014?

23 A. Yes.

24 Q. Did he supervise you directly?

25 A. Yes.



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Java - Cross

1 Q. Do you know if he kept track of your hours?

2 A. No.

3 Q. No you don't know if he kept track of your hours or no, he  
4 did not?

5 A. No, he did not.

6 Q. Why do you say that?

7 A. Because I never had a record of when I came in and when I  
8 left.

9 Q. What type of things -- when you say you never had a record,  
10 what do you mean by that?

11 THE INTERPRETER: The interpreter needs clarification  
12 as to a noun witness is using.

13  
14 A. That I did not record the schedule of -- the time that I  
15 came in or the time that I would leave.

16 Q. What type of things did Mr. Pichardo ask you to do?

17 A. Cleaning and to receive purchases. That was it.

18 Q. How many people worked at El Aguila in 2008, if you know?

19 A. During the day, four of us worked there. And I don't have  
20 the number for the night.

21 Q. What did four people do during the day?

22 A. One person did the cooking. Another person would serve. I  
23 used to do the cleaning, and the manager who was in charge of  
24 making orders and being there.

25 Q. During the day time, how would you -- what are the hours

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1 during the day time?

2 MS. ISAACSON: Objection. Can we clarify what year  
3 and what he means by during the same time?

4 THE COURT: Yes. Clarify your question. It's a  
5 little imprecise.

6 Q. Sure. We're still talking about 2008 you said there were  
7 four people who worked during the day time. What hours do you  
8 consider to be daytime?

9 A. From 8:00 -- they worked from 8:00 to 5:00, and I used to  
10 work from 8:00 to 8:00.

11 Q. So a daytime shift is what you -- a daytime shift is 8:00  
12 to 5:00, 8:00 a.m. to 5:00 p.m. Is that what you're saying?

13 A. 8:00 to 5:00.

14 THE COURT: Can I just ask a question? Mr. Mendoza,  
15 what time would the restaurant open to the public each day?

16 THE WITNESS: At 11:00.

17 THE COURT: So when you would come in at 8:00 in the  
18 morning, what would you be doing from 8:00 a.m. to 11:00 a.m.  
19 before the restaurant was open to the public?

20 THE WITNESS: Cleaning. Yes, that.

21 THE COURT: So your job was to do cleaning from  
22 8:00 a.m. to 11:00 a.m. each day?

23 THE WITNESS: No. Throughout the entire day, there  
24 were other things to do.

25 THE COURT: You may proceed, Mr. Costin.

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Java - Cross

1 BY MR. COSTIN:

2 Q. What time did the restaurant close for business in 2008?  
3 What time of day?

4 A. 4:00 in the morning.

5 Q. Did other people come into work at 5:00 at the restaurant.  
6 Withdrawn. Withdrawn.

7 When did other employees come into work at El Aguila  
8 in 2008, other than the four people you just mentioned?

9 A. 5:00 in the afternoon.

10 Q. How many people came in at 5:00 in the afternoon?

11 A. I don't know exactly how many people.

12 Q. Was it more than two?

13 A. Yes.

14 Q. More than five?

15 A. Yes.

16 Q. More than ten?

17 A. Yes.

18 Q. More than 15?

19 A. Yes.

20 Q. More than 20?

21 A. I would think so.

22 MS. ISAACSON: Objection. Can you clarify if he's  
23 talking about employees or customers?

24 THE COURT: You're talking about customers, aren't  
25 you?

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Java - Cross

1 MR. COSTIN: No, I'm talking about employees. Talking  
2 about employees.

3 THE COURT: He may not have understood.

4 MR. COSTIN: Yes, OK. Fair.

5 BY MR. COSTIN:

6 Q. I'm talking about employees. How many employees would come  
7 in to work other than the four people you mentioned to work in  
8 El Aguila in 2008.

9 A. About 15 people.

10 Q. What time would they come in?

11 A. They would start coming in at 5:00 in the afternoon until  
12 8:00 at night.

13 Q. Would they leave at 8:00 -- are you saying they would leave  
14 at 8:00, those 15 employees?

15 A. No. They used to work at night.

16 Q. Do you know what time they would stop working?

17 A. At 4:00 in the morning.

18 Q. How do you know that?

19 A. Because the restaurant would open at 8:00 in the morning,  
20 and it would close at 4:00 in the morning.

21 Q. Were you present at 4:00 in the morning when these people  
22 in the restaurant closed?

23 A. Yes. Whenever I worked at night.

24 Q. So you would stay until 4:00 in the morning?

25 MS. ISAACSON: Objection. Can he specify what day

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1 he's talking about?

2 THE COURT: I'm sorry.

3 MS. ISAACSON: Can he specify what date he's talking  
4 about when he says he worked till 4:00 in the morning?

5 THE COURT: You mean in terms of a time frame?

6 MS. ISAACSON: Yes, your Honor.

7 THE COURT: Well, he'll get to that. I think we're  
8 talking more generically first, and then he'll say whether that  
9 was in one year or all years, whatever.

10 Let me have the question back to you, Mr. Mendoza.

11 The question is: Were you present at 4:00 in the  
12 morning when the restaurant closed? Was that the question?

13 MR. COSTIN: Yes, your Honor.

14 THE WITNESS: Yes. Only one day.

15 THE COURT: One day in all the time you worked there  
16 or one day a week?

17 THE WITNESS: One day a week during the year.

18 THE COURT: One day a week during a year? Can you  
19 explain what you mean by that?

20 THE WITNESS: When I was cooking at night.

21 MR. COSTIN: Going back to -- I'm going back to 2008.  
22 I just want you to focus on that. Actually, let's make it  
23 2010. I believe that you testified in 2010 that you worked  
24 from 8:00 a.m. to 8:00 p.m. six days a week. Is that correct?  
25 A. Yes.

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1 Q. Were you ever in the restaurant at 4:00 in the morning?

2 That's my question.

3 THE COURT: In 2010?

4 MR. COSTIN: Yes, in 2010.

5 A. No.

6 Q. Did you ever see a written schedule at El Aguila in 2010?

7 A. No.

8 THE COURT: When you say written schedule, do you mean  
9 a schedule for employees?

10 MR. COSTIN: For employees, that is correct.

11 A. No.

12 Q. How did employees know when they were supposed to work in  
13 2010?

14 A. That I don't know. Our employers would give us our  
15 schedule.

16 Q. How would your employers give you and your coworkers your  
17 schedule in 2010?

18 A. I was working from 8:00 a.m. until 8:00 p.m. And the next  
19 shift would start at 5:00 p.m.

20 Q. Do you know how your coworkers would know when they were  
21 scheduled to work?

22 A. No.

23 Q. Did your coworkers in 2010 tell you that they stayed there  
24 until 4:00 the morning, assuming they started at 5:00 p.m.?

25 A. Yes, that was the time the restaurant would close.

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Java - Cross

1 Q. Did anyone tell you that they worked from 5:00 p.m. until  
2 4:00 a.m. in 2010? That's my question, sir. Did anyone--

3 MS. ISAACSON: Objection. Hearsay.

4 THE COURT: Overruled.

5 A. No.

6 Q. Besides the fact that you stated the restaurant closed at  
7 4:00 a.m. and you assumed that people worked from 5:00 p.m.  
8 till 4:00 a.m., do you have any other basis for believing that  
9 people worked those hours in 2010?

10 A. Yes.

11 Q. What other basis do you have to reach that conclusion?

12 A. Why? Because they were working nights. They were working  
13 nights.

14 Q. So it's just an assumption on your part. Is that correct?

15 A. No, it's not an assumption.

16 Q. And just one last time. Any other information that you can  
17 give me besides what you just told me to help me understand why  
18 you believe your employees worked from 5:00 p.m. until  
19 4:00 a.m. in 2010?

20 A. Yes. Because that was a disco, and performers would go  
21 there, and the rhythm was to be there at night.

22 Q. Do you know if any employees at El Aguila signed in and  
23 signed out during any time that you worked there to report  
24 their hours?

25 A. No.

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1 Q. And your coworkers, between 2010 and 2016, do you know if  
2 their schedules varied from week to week or changed from week  
3 to week?

4 A. No.

5 Q. So that means you're saying that you -- are you saying your  
6 schedules were the same week to week or you don't know if the  
7 schedules changed? That's my question.

8 A. No, I don't know.

9 Q. Why not?

10 A. Because I regularly worked more during the day and I don't  
11 know who was coming at night.

12 Q. Now you indicated there was a time between 4:00 -- that you  
13 worked from 5:00 p.m. until -- I'm sorry.

14 On direct examination you indicated that there were  
15 sometimes that you worked from 7:00 p.m. until 5:00 a.m. Do  
16 you recall that? In 2012.

17 A. Yes, from July of 2012 to July of 2013.

18 Q. Do you recall the names of anyone else that worked the same  
19 hours that you worked during that time period?

20 MS. ISAACSON: Objection. Can you clarify if he is  
21 speaking about the night shift or the day shift during that  
22 time?

23 THE COURT: That time period, the antecedent time  
24 period was 7:00 p.m. to 5:00 a.m. That the question you are  
25 asking. Is that not right?



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1 MR. COSTIN: That's correct, during the next shift.  
2 Yes, your Honor.

3 THE COURT: Do you understand the question,  
4 Mr. Mendoza?

5 THE WITNESS: Yes.

6 THE COURT: Then please answer it.

7 A. Well, that schedule was only when I was working one day at  
8 night.

9 Q. I appreciate that. Thank you. But my question is did  
10 anyone else work that same schedule with you?

11 A. Yes.

12 Q. Who?

13 A. Oh, I don't remember all the names.

14 Q. Can you tell me some?

15 A. It might have been Evelyn. Could have been Desiree. A lot  
16 of people whose names I don't remember.

17 Q. What did those people do?

18 A. Serving people, bringing them food and drinks.

19 Q. Do you know if any of those employees worked any other day  
20 besides Sunday?

21 A. No, I don't know. I don't know their schedules.

22 Q. Do you recall seeing them during the weeks when you worked  
23 the day shift from time you would come in?

24 A. Yes.

25 Q. How many times a week would you see them?

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1 A. One regularly.

2 Q. So you would see them at least one other time during the  
3 course of the week. Is that what you're saying?

4 A. Yes.

5 Q. Would you see them twice, two other days during the week  
6 besides that -- withdrawn. Let me put it a little simpler.

7 You would see them in the restaurant twice during the  
8 week once at night when you worked with them and once during  
9 the day shift. Is my understanding correct?

10 A. No, because usually they, the night people would come in at  
11 night.

12 Q. When you left there, when the night people would come in --  
13 excuse me. When you worked during the day between 20 -- in  
14 2012 and 2013, you would see the night people come in. Is that  
15 fair to say?

16 A. Yes.

17 Q. So my question to you is, you worked five days during the  
18 week -- you worked five days during the week during the day  
19 shift, right, in 2012?

20 A. Yes.

21 Q. How many times would you see people who worked the night  
22 shift with you on Sunday during the day shift? Actually,  
23 withdrawn. Let me make it a little clearer.

24 How many times during the course of a week would you  
25 see the night shift people coming who worked with you in the

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1 restaurant?

2 A. During the year that I worked nights?

3 Q. Yes, during the year that you worked nights, how often  
4 would you see your coworkers who worked a full night shift with  
5 you on another day that you worked?

6 A. One day a week.

7 Q. One day a week and that would --

8 THE COURT: Mr. Costin, how much more do you have,  
9 would you say ballpark, for your cross?

10 MR. COSTIN: If I don't get bogged down, Judge, it  
11 might just be a little while.

12 THE COURT: I don't know what that means.

13 MR. COSTIN: Yeah, I know.

14 THE COURT: If you don't get bogged down, it will take  
15 you a little while; but if you do get bogged down, then it  
16 won't take you a little while? That doesn't make any sense.

17 MR. COSTIN: Yes, totally superfluous, Judge.

18 THE COURT: Ten minutes? A half an hour? I'm trying  
19 to figure out when we should take our morning break. If you  
20 are going to be done in 10 or 15 minutes, I will let you  
21 finish. If you have a half an hour or more, we will take a  
22 break now.

23 MR. COSTIN: I have more than that, your Honor.

24 THE COURT: You have more than what?

25 MR. COSTIN: I have more than half an hour, your

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1 Honor.

2 THE COURT: You have more than half an hour?

3 MR. COSTIN: I think so.

4 THE COURT: OK. I'll be interested to hear because  
5 you can't go too far outside the scope of direct, right?

6 All right. Let's take our morning recess.

7 (Recess)

8 THE COURT: You may proceed, Mr. Costin.

9 MR. COSTIN: Sure.

10 BY MR. COSTIN:

11 Q. During the time that you worked at El Aguila, are you aware  
12 of any employee that received overtime?

13 A. No.

14 THE COURT: When you say "received overtime," can you  
15 be a little bit more precise with the question?

16 Q. Are you aware of anyone at any time during the time that  
17 you worked at El Aguila that worked more than 40 hours in a  
18 one-week period?

19 A. No.

20 Q. Santiago Almonte was a manager during the time you worked  
21 at El Aguila. Is that correct?

22 A. Yes.

23 Q. Did he ever give you specific work instructions?

24 A. Yes.

25 Q. What did he tell you to do during the time that you worked

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1 at El Aguila?

2 A. What I had to do as my job and the schedules and my pay,  
3 the pay.

4 Q. You indicated that Santiago and Juan Almonte were partners.  
5 Is that right?

6 A. Yes.

7 Q. How do you know that?

8 A. Because Santiago told me that Juan was his brother and his  
9 partner.

10 Q. When did he tell you that?

11 A. When Juan Almonte came to work at El Aguila.

12 Q. How many times did Santiago Almonte tell you that he was an  
13 owner or partner with Juan Almonte?

14 A. Once.

15 Q. What year?

16 A. Might be in 2013, yes.

17 Q. Did you see any of the business paperwork that would  
18 indicate who the owners of the business actually are?

19 A. No.

20 Q. When did Santiago Almonte tend to be in the business  
21 between 2010 and 2016? When would he be inside of El Aguila?

22 THE INTERPRETER: For the interpreter, did you say  
23 Santiago Almonte?

24 MR. COSTIN: Yes.

25 A. He was usually there at night. During the day sometimes

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1 twice a week.

2 Q. In El Aguila, did you ever see a poster that talked about  
3 the minimum wage?

4 A. Yes.

5 Q. Where was that poster, sir?

6 A. On the wall.

7 Q. The wall where? Which wall? Be more specific, please.

8 A. Across from the bar.

9 Q. Did you ever look at it?

10 A. Yes.

11 Q. Was it in Spanish?

12 A. No.

13 Q. What language was it in, sir?

14 A. In English.

15 Q. How do you know it was a minimum wage poster?

16 A. Because I read some English, and I used to clean the frame.

17 Q. Did you understand what the poster was saying, sir?

18 A. Almost all of it.

19 Q. When was the first time you saw that minimum wage poster?

20 A. I believe it was in 2013.

21 Q. In 2013 when you saw that poster, did you believe you were  
22 being paid properly?

23 A. No.

24 Q. Did you say anything to anyone about that?

25 A. No.

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1 Q. Did you do anything to correct the improper wages you  
2 believed you were receiving?

3 A. No.

4 Q. Did you see that poster in 2014, sir?

5 A. Yes.

6 Q. And did you see it in 2015 and 2016, sir?

7 A. Yes.

8 Q. During that four-year time frame, did you believe that you  
9 were not being paid properly?

10 A. Yes.

11 Q. Did you speak to anyone about that?

12 A. No.

13 Q. Now, isn't it true that during the time that you didn't  
14 work -- isn't it true that in 2010 right before 2010, 2009,  
15 2010, you were not an employee of El Aguila?

16 A. No, I was an employee.

17 Q. Didn't you leave El Aguila for about a year to work  
18 someplace else in about 2009?

19 A. Yes.

20 Q. Where did you go, sir, do you recall?

21 MS. ISAACSON: Objection to this line of questioning  
22 as irrelevant as it is before the statute of limitations.

23 THE COURT: It is before the statute of limitations,  
24 Mr. Costin, right? Isn't the statute of limitations 2010 here?

25 MR. COSTIN: Yes, it is, your Honor.

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1 THE COURT: What difference does it make where he  
2 worked in 2009?

3 MR. COSTIN: Your Honor, just two questions, and I  
4 will move on, if I might.

5 THE COURT: Two questions. I'm going to count them.

6 MR. COSTIN: No problem.

7 Q. What was my last question?

8 THE COURT: Where did you go?

9 Q. Where did you work?

10 THE COURT: Where did you work?

11 A. I worked in -- around here in Manhattan.

12 MR. COSTIN: I'll move on, your Honor.

13 Q. Isn't it true that after you got off of work from  
14 El Aguila, you would sit at the bar and drink beer?

15 MS. ISAACSON: Objection. Irrelevant, and it's beyond  
16 the scope of direct.

17 THE COURT: Overruled.

18 MS. ISAACSON: And also what time period is he  
19 speaking about?

20 THE COURT: Overruled. Please answer the question.

21 THE INTERPRETER: May the interpreter interpret the  
22 question, your Honor?

23 THE COURT: Yes.

24 (Question interpreted)

25 A. Yes.



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1 Q. How many beers would you consume after you got off from  
2 work while sitting at the bar?

3 A. Maybe six?

4 THE COURT: When are we talking about?

5 MR. COSTIN: That was going to be my next question.

6 Q. What time period are we talking about? Did you do this in  
7 2010?

8 A. No.

9 Q. When were you drinking six beers at the bar after work,  
10 what years?

11 A. From 2013 to 2016.

12 Q. And you would do this six days a week or every day after  
13 work, correct?

14 A. No.

15 Q. How long would you stay at the bar after you -- how long  
16 would you stay in the bar after you finished work in 2013 to  
17 2016?

18 A. 20 to half an hour.

19 Q. Would you drink beer during the day during your shift at  
20 any time you worked at El Aguila?

21 A. Yes.

22 Q. What years did you drink beer while you were at work?

23 A. In 2013.

24 Q. Are there any other years besides 2013 that you would drink  
25 beer while you were working?

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1 A. Yes, in 2015.

2 Q. What about 2014?

3 A. I wouldn't regularly do it.

4 THE COURT: You wouldn't regularly do it in 2014? Is  
5 that what your testimony is?

6 Because Mr. Costin's question was specifically about  
7 2014. You just said -- you testified in 2013 and 2015 that you  
8 drank beer while you worked. What about 2014?

9 THE WITNESS: Because I was under medical treatment.  
10 I was under a lot of medication.

11 THE COURT: In 2014?

12 THE WITNESS: Mmm-hmm.

13 THE COURT: So you drank beer regularly during your  
14 job during 2013 and 2015 but not in 2014 because of a medical  
15 condition?

16 THE WITNESS: Yes.

17 THE COURT: What about 2014 until July when you left?

18 THE WITNESS: Then too.

19 THE COURT: "Then too" meaning you drank beer while  
20 you were working during that period, 2014?

21 THE WITNESS: After work.

22 THE COURT: No. Mr. Costin was asking several  
23 questions of you about drinking beer while you were on the job.  
24 Did you not understand that?

25 THE WITNESS: Yes.

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1 THE COURT: You understood that?

2 THE WITNESS: Yes.

3 THE COURT: So what about 2016? Did you drink beer  
4 while you were on the job in 2016?

5 THE WITNESS: Yes.

6 THE COURT: All right, Mr. Costin, go ahead.

7 BY MR. COSTIN:

8 Q. What about 2012, did you drink beer while you were working  
9 in 2012?

10 A. No.

11 Q. What about 2011?

12 A. Not then either.

13 Q. What about 2010?

14 A. Not then either.

15 Q. How many beers would you drink in 2013 while you were at  
16 work?

17 THE COURT: You mean on a given day?

18 MR. COSTIN: On a given day, yes.

19 A. Three max.

20 Q. Where would you go -- where would you drink the beer on any  
21 given day in 2013?

22 A. Right there at the bar.

23 Q. You would sit at the bar while you were at work and drink  
24 beer?

25 A. No, not while at work.

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1 Q. You testified a few moments ago that during your workday in  
2 2013, you would consume three beers. My question, to you, sir,  
3 is at what point in time while you were supposed to be at work  
4 were you drinking beers?

5 A. When people would come to eat lunch.

6 Q. And you're saying you would sit down at the bar and consume  
7 three beers while people -- while customers were in the  
8 restaurant eating lunch?

9 A. I would never sit there.

10 Q. Then please explain to me where you physically consumed the  
11 beers when you were supposed to be at work. That's my  
12 question.

13 A. I would have the beer at the bar because many people would  
14 come in, taxi drivers and people that I had gotten to know. So  
15 they would invite me to a beer, but I would drink it while  
16 walking and working.

17 Q. Are you aware of any other employees at El Aguila that  
18 would walk around and drink beer while they were working?

19 A. Yes.

20 Q. Who?

21 A. There was Pedro Pichardo. There was one that they used to  
22 call Chago or someone else, they call him Chago.

23 Q. Pedro Pichardo is a manager, correct?

24 A. Yes.

25 Q. And Chago, what does Chago do?

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1 A. Night manager.

2 Q. Are you aware of anyone else besides those two that walked  
3 around while they were supposed to be working and drink beer?

4 A. Yes, usually everyone.

5 Q. You're saying that at any given -- that you saw at least  
6 every employee that worked at El Aguila drink a beer while they  
7 were scheduled to be working?

8 A. Yes.

9 Q. Did all employees drink beer frequently -- how often in the  
10 course of a day would you see an employee drink beer while  
11 they're supposed to be working?

12 A. Regularly, it was every day.

13 Q. Do you know if they paid for these beers?

14 THE INTERPRETER: For the interpreter, do you know if  
15 they paid for these beers?

16 MR. COSTIN: Yes.

17 A. No, they did not pay.

18 Q. Did you pay for your beers?

19 A. No. Those that invited me to one would pay for it.

20 Q. Any idea how many beers your coworkers would drink during  
21 their work shifts?

22 A. No, I honestly don't.

23 Q. Now, you said you also cooked for El Aguila, correct?

24 A. Yes.

25 Q. And I believe you said it was when you worked at night.

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1 A. Yes, only at night.

2 Q. Were you ever -- did you ever receive a certificate from  
3 the New York City Department of Health to cook or prepare food?

4 A. No.

5 Q. Were there any other cooks working at night with you?

6 A. Yes.

7 Q. Who?

8 A. Several that went through there. Many cooks.

9 Q. Can you give me the name of someone?

10 A. One is called Rafael -- two were called Rafael. Another  
11 one is Antonio. Another one used to be called El Nene and --

12 Q. Did you ever cook for taxicab drivers?

13 A. Yes.

14 Q. Did you make special food just for them?

15 A. Yes.

16 Q. And this is food that wasn't on the menu, right?

17 A. Right.

18 Q. And this is food that the El Aguila did not -- El Aguila  
19 did not receive any money for the food that you gave to these  
20 cab drivers. Is that right?

21 A. They would pay.

22 Q. Who would they pay?

23 THE INTERPRETER: Whom did they --

24 Q. Who did they pay?

25 A. To those that collected payment.

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1 Q. And you bought in ingredients to make the food, right? You  
2 brought in ingredients to make the food for the cab drivers?

3 A. Sometimes.

4 Q. How many times were you sent home because you were  
5 intoxicated at work?

6 A. Never.

7 Q. How many times were you ever sent home by any manager for  
8 any reason during your time at El Aguila?

9 A. Never.

10 Q. Did Pedro Pichardo ever send you home early?

11 A. Once he did.

12 Q. Why?

13 THE INTERPRETER: Why?

14 THE COURT: I thought you said when, right? Did you  
15 say when or why?

16 MR. COSTIN: Just now I said why.

17 THE COURT: I'm sorry, why?

18 THE INTERPRETER: May the interpreter confer with her  
19 colleague, please, your Honor?

20 (Interpreters confer)

21 THE INTERPRETER: Your Honor, the interpreter needs to  
22 clarify a term that the witness has used. May the interpreter  
23 confer with the witness?

24 THE COURT: Yes.

25 A. He was up all night -- and the witness has used a term that

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1 if interpreter verbatim means he was electrical and as the  
2 interpreter has conferred with the witness, the witness has  
3 explained that he was hung over.

4 Q. When was that, sir?

5 A. I don't quite recall. 2012?

6 Q. Did Santiago Almonte ever send you home for any reason?

7 A. No.

8 Q. And what about Juan Almonte? Did he ever send you home for  
9 any reason at any time during your employment?

10 A. No.

11 Q. Did any manager -- did any other manager ever send you home  
12 for any reason at any time during your employment with  
13 El Aguila?

14 A. No.

15 Q. And were you ever suspended at all during your time at  
16 El Aguila?

17 A. No.

18 THE COURT: I have a question. Did you have any  
19 vacations while you worked for El Aguila from 2010 to 2016?

20 THE WITNESS: No.

21 THE COURT: Did you have any days off for holidays?

22 THE WITNESS: No.

23 THE COURT: Was the restaurant open on Thanksgiving  
24 Day, for example?

25 THE WITNESS: Yes.



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1 THE COURT: Was it open on Christmas Day?

2 THE WITNESS: Yes.

3 THE COURT: And you worked on both of those days?

4 THE WITNESS: Yes.

5 THE COURT: And New Year's Day as well?

6 THE WITNESS: Yes.

7 THE COURT: So your testimony is that in six years,  
8 from 2010 to 2016, you never had a day off for a holiday or for  
9 a vacation?

10 THE WITNESS: Only when I got sick.

11 THE COURT: When was that?

12 THE WITNESS: In 2015.

13 THE COURT: How long were you out due to medical  
14 reasons?

15 THE WITNESS: One week.

16 THE COURT: You may proceed, Mr. Costin.

17 BY MR. COSTIN:

18 Q. Isn't it true that you missed time from work in 2016  
19 because you were shot?

20 THE INTERPRETER: Because you were --

21 Q. Shot by a gun.

22 A. 2015.

23 Q. You were shot in 2015?

24 A. Yes.

25 Q. Now, you indicated earlier that in 2014 you were under

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1 medical treatment. Did you miss time from work in 2014 due to  
2 your health issue?

3 A. No.

4 Q. Were you ever late coming to work?

5 A. No.

6 Q. Did your managers every express concern to you about not  
7 being able to find you during the workday?

8 A. No.

9 Q. Sir, your testimony is that Pedro Pichardo, Santiago  
10 Almonte and Juan Almonte never talked to you about not being  
11 able to find you during the work day?

12 A. No.

13 Q. Who is Margarita Carasquillo?

14 A. She's a customer.

15 THE COURT: A customer of the restaurant?

16 THE WITNESS: Yes.

17 Q. At El Aguila specifically, is that right?

18 A. Yes.

19 Q. Did you ever see her outside of the restaurant, El Aguila?

20 A. Yes.

21 Q. When did you see her? Let me rephrase. Under what  
22 circumstances would you see her?

23 A. When she was bringing the --

24 THE INTERPRETER: The interpreter would like to  
25 clarify.

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1 Interpreter's correction. When I was bringing  
2 deliveries to her house.

3 Q. When were you bringing deliveries to her house?

4 A. At lunchtime.

5 Q. Is this a house or an apartment?

6 A. An apartment.

7 Q. And this is the apartment right next to El Aguila, correct?

8 A. Yes.

9 Q. How long would it take for you to make that delivery?

10 A. From 10 to 15 minutes.

11 Q. How long would you stay inside the apartment where

12 Ms. Carasquillo lived?

13 A. For ten to 15 minutes.

14 Q. What years did you make these deliveries?

15 A. 2014.

16 Q. Any other years besides 2014, sir?

17 A. No.

18 Q. Would you ever see her in the restaurant -- what years did  
19 you see her inside the restaurant, if any?

20 A. Like from 2010 until 2016.

21 Q. How many days a week would you see her inside of the  
22 restaurant during that time period?

23 A. Almost every day.

24 Q. What was your cell number in 2010 and 2016, if you recall?

25 MS. ISAACSON: Objection. What's the relevance of

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1 this?

2 THE COURT: Overruled. Subject to connection, I'll  
3 allow it.

4 A. My phone number?

5 Q. Yes, sir.

6 A. It's the same one I have now.

7 Q. What number is that, sir?

8 A. (347) 337-8536.

9 Q. Did you call Ms. Carasquillo using your cell phone?

10 A. Yes.

11 Q. Why, sir?

12 A. Because we had a friendship.

13 Q. What do you mean by friendship?

14 A. A friendship which ended in love.

15 Q. What do you mean by that, sir?

16 A. Sexual relations.

17 Q. And when did this occur?

18 A. In 2014.

19 Q. When else did it occur?

20 A. Just then.

21 Q. When would you see Ms. Carasquillo in 2014 socially?

22 A. At lunch time.

23 Q. How long would you be with Ms. Carasquillo at lunchtime?

24 A. For 10 to 15 minutes.

25 Q. Now, you said that this was a sexual relationship, correct?

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1 A. Yes.

2 Q. How long would you spend -- when would you spend -- when  
3 would you have sex with Ms. Carasquillo?

4 A. When or at what time?

5 Q. Well, what time? What time of day?

6 A. At lunchtime.

7 Q. And that would last about 10 to 15 minutes?

8 A. Yes.

9 Q. Would you bring Ms. Carasquillo things besides yourself and  
10 food during lunchtime in 2014?

11 A. Yes.

12 Q. What else would you bring?

13 A. Toilet paper and drinks.

14 Q. What type of drinks, sir?

15 A. Beer.

16 Q. Would you consume any beer while you were with her?

17 A. No.

18 Q. Did you give her cash?

19 A. Yes.

20 Q. How much money would you give her?

21 A. \$20.

22 Q. Would you bring her a MetroCard?

23 A. No.

24 Q. Would you bring these things -- how many times a week would  
25 you see her in 2014 in a social setting?

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1 A. Once a month.

2 Q. How often would you have sex with Ms. Carasquillo in 2014?  
3 How many times in the course of a month?

4 A. Once.

5 Q. Once a month?

6 A. Yes.

7 Q. Where would you -- and where would you have sex? Would it  
8 be in her apartment or someplace else?

9 A. In her apartment.

10 Q. Why did the relationship end? Actually, withdrawn. Did  
11 the relationship end?

12 A. Yes.

13 Q. Why?

14 A. Because she was difficult.

15 Q. Who is Melena?

16 A. That's my wife.

17 Q. When did you marry her?

18 MS. ISAACSON: Objection. When is the relevance of  
19 when he married his wife?

20 THE COURT: Yes, I think we're getting a little far  
21 afield here, Mr. Costin.

22 MR. COSTIN: I will ask one more question instead.

23 THE COURT: You don't have to answer the question  
24 that's pending.

25 Ask a different question. Get to whatever you're

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1 getting to in the next question.

2 BY MR. COSTIN:

3 Q. Did your wife and Ms. Carasquillo have an argument about --

4 MS. ISAACSON: Objection. What is the relevance?

5 THE COURT: I really don't know. I really don't know.

6 MR. COSTIN: That's the only question, Judge, I have  
7 on this matter, but I'll move on, your Honor.

8 THE COURT: Why don't you move on. I don't think it  
9 sheds enough light to warrant our going down this road any  
10 further than you have.

11 MR. COSTIN: Yes, sir.

12 THE COURT: Next.

13 BY MR. COSTIN:

14 Q. The work that you did at Las Banderas, that consisted of --  
15 tell me what you did at Las Banderas, please.

16 A. I did cleaning and I received purchases.

17 Q. When you say received purchases, you mean deliveries for  
18 the bar and restaurant for Las Banderas?

19 A. Yes.

20 THE COURT: Are we getting close, Mr. Costin? It's  
21 been another 45 minutes. Your cross has tripled the length of  
22 the direct.

23 MR. COSTIN: Your Honor, believe it or not, you read  
24 my mind. Just give me one moment. I just want to talk to my  
25 client. Thank you for your patience.

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1 THE COURT: OK.

2 (Pause)

3 Q. I have a question. Is it possible to go from the basement  
4 of El Aguila to -- is there a back door connected to the  
5 basement of El Aguila that leads to the back of the building?

6 A. Yes.

7 Q. And that leads to parking lot, correct?

8 A. Yes.

9 Q. And Ms. Carasquillo's apartment is directly accessible from  
10 the parking lot, is that correct?

11 MS. ISAACSON: Objection again. I don't know why that  
12 is relevance.

13 A. Yes.

14 THE COURT: Hold on a second. Let me just say  
15 something going forward. We have a question. We have an  
16 interpreter interpreting, and if you're objecting while she's  
17 interpreting, I can't hear everything, OK? So when the  
18 interpreter finishes interpreting, then object before he  
19 answers, not while the interpreter is interpreting. What's the  
20 objection.

21 MS. ISAACSON: Why is it relevant where is the  
22 location or how to get to Ms. Carasquillo's apartment from the  
23 parking lot?

24 THE COURT: Overruled. You must answer.

25 THE INTERPRETER: The interpreter is not sure if the



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1 entire question got interpreted. I can see it from the  
2 screen -- actually, the interpreter would request the question  
3 be repeated, please.

4 MR. COSTIN: Can you read it pack, please.

5 THE COURT: I'll read it.

6 "Is it possible to go from the basement of El Aguila,  
7 is there a back door connected to the basement" -- no you  
8 answered that one. I'm sorry.

9 "Is Ms. Carasquillo's apartment directly accessible  
10 from the parking lot?"

11 THE WITNESS: No.

12 MR. COSTIN: No further questions, your Honor.

13 THE COURT: All right. Redirect.

14 MS. ISAACSON: No further questions.

15 THE COURT: All right.

16 Mr. Mendoza, you may step down.

17 (Witness excused)

18 THE COURT: Any other witnesses, Ms. Isaacson?

19 MS. ISAACSON: No, your Honor. Plaintiff closes.

20 THE COURT: Plaintiff what?

21 MS. ISAACSON: Closes.

22 THE COURT: You mean you rest?

23 MS. ISAACSON: Yes, we rest.

24 THE COURT: You might be closing later, but you're  
25 resting now.

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1 Mr. Costin, your turn.

2 MR. COSTIN: I'd like to make a motion to dismiss at  
3 this time, your Honor. I believe the plaintiff has not met its  
4 burden at trial.

5 THE COURT: I'm happy to hear the argument, but I'm  
6 not sure why you think that is so. Go ahead.

7 MR. COSTIN: Sure, your Honor.

8 The plaintiff has not indicated -- I'll withdraw.  
9 I'll withdraw, your Honor. I'll withdraw. I'm not sure I can  
10 make -- I'm not going to waste your time with this.

11 THE COURT: Very well. Then call your witness.

12 MR. COSTIN: Pedro Pichardo, your Honor. He's out in  
13 the hallway. May I get him, please?

14 THE COURT: Yes.

15 PEDRO W. PICHARDO,

16 called as a witness by the Defendant,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. COSTIN:

20 THE COURT: You may be seated.

21 Mr. Costin, you may proceed.

22 Q. Did you ever work for a business called El Aguila Bar and  
23 Restaurant?

24 A. Yes.

25 Q. When did you work there, sir?

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1 A. I worked there from 2008 until 2014.

2 Q. What was your job title?

3 A. Manager. Day manager.

4 Q. What were your job duties?

5 A. My duties were to make purchases, to pay for the purchases,  
6 to place orders, and to supervise the morning employees.

7 Q. What hours -- did you have -- what was your schedule in  
8 2010?

9 A. 9:00 to 5:00.

10 Q. Did your schedule change at any time between 2010 and 2016?

11 THE COURT: Well, he said he only worked until 2014.

12 MR. COSTIN: 2014. Thank you, Judge.

13 A. I think it was only -- it only changed in March more or  
14 less for two weeks when I worked nights in 2014.

15 Q. What days of the week did you -- generally what days of the  
16 week did you work besides that night shift?

17 A. Well, I worked on Mondays -- well, that is five days a  
18 week.

19 Q. What days did you not work?

20 A. On Tuesdays and sometimes Wednesdays, but that changed  
21 starting in 2012.

22 MR. COSTIN: One moment, your Honor, please.

23 (Pause)

24 Q. What happened in 2012?

25 A. Well, that's because in 2012, Mexico -- that's what we

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1 called Florencio, we called him Mexico -- he had been working  
2 Mondays and then -- Mexico was working Sunday nights, so then I  
3 started working on Mondays.

4 THE COURT: Hold on one second. I'd like the  
5 interpreter to tell the witness that he needs to speak in short  
6 phrases or sentences so that it's easier for you to interpret.  
7 And he can't talk too fast, otherwise, you won't be able to  
8 keep track of him.

9 Do you understand, sir? Thank you.

10 You may proceed.

11  
12 BY MR. COSTIN:

13 Q. Do you know Florence Mendoza Java?

14 A. Yes.

15 Q. Is he seated in this courtroom right now?

16 A. Yes.

17 Q. Just identify an article of clothing he is wearing.

18 A. Well, he has a shirt and he has a kind of beige-colored  
19 jacket and a purple shirt.

20 THE COURT: I don't think there is any issue that he's  
21 identifying the plaintiff, is there?

22 MS. ISAACSON: No.

23 THE COURT: The record should reflect the witness  
24 identified the plaintiff as the plaintiff.

25 BY MR. COSTIN:

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1 Q. Did Mr. Java work with you?

2 A. Yes.

3 Q. What was your work relationship -- were you his supervisor?

4 A. Yes.

5 Q. What type of things did you instruct Mr. Java to do?

6 A. His duties were to clean the ballroom from 9:00 until -- or  
7 the barroom from 9:00 until 11:00. And after that, like after  
8 12:00 to do deliveries. And sometimes when there were things  
9 missing or that had run out in the kitchen, the cook would send  
10 him down to the basement to get something.

11 Q. Did he ever cook during the time that he was working with  
12 you during the day?

13 A. Sometimes he would make like appetizers, like Mexican food,  
14 and he would give it to you to taste, and there were also some  
15 taxi drivers he would give that to. No one gave him orders to  
16 do it. He would just do it to make me happy and -- and the  
17 taxi drivers. Nobody ordered him to do any of that.

18 Q. Did El Aguila make any money whenever he gave this food to  
19 the taxi drivers?

20 A. No.

21 Q. Do you know if any sales were rung up every time he gave  
22 money to the taxicab drivers?

23 THE COURT: Every time he gave what to the taxicab  
24 drivers?

25 Q. Every time he gave food. Excuse me. Every time he gave

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1 food to the taxicab drivers.

2 A. No.

3 Q. Basic question I should have asked earlier: What were the  
4 hours of operation of El Aguila in 2010?

5 A. It would open to the public sometimes between 10:00 and  
6 11:00 a.m. until 4:00 a.m.

7 Q. What time would you expect Mr. Java to be there?

8 A. Please repeat that question.

9 (Question repeated)

10 A. He came in at 8:00.

11 Q. What time was he supposed to leave?

12 A. 4:00.

13 Q. Was that his schedule in 2010?

14 A. Yes.

15 Q. Did his schedule ever change during the time that you  
16 worked there?

17 A. After 2012.

18 Q. When he came in at 8:00, was he always supposed to leave at  
19 4:00 p.m.?

20 A. Yes.

21 Q. Do you know why?

22 A. That's what they, Mr. Juan Almonte, told all of us when we  
23 started to work for the company.

24 Q. When you say "they," who did Mr. Juan Almonte say this to?

25 A. He told me. Mr. Juan Almonte told me what my schedule

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1 would be when I started working, and he also told Mr. Mendoza  
2 what his schedule would be when he started working, and he also  
3 told me the schedule.

4 Q. Was the schedule ever written down?

5 A. No.

6 Q. Did everyone have a fixed schedule?

7 A. Yes.

8 Q. When I say everyone, I'm talking about people that worked  
9 with you between the hours of 8:00 a.m. and 4:00 p.m.

10 A. Yes.

11 Q. Do you know if the employees signed in and out when they  
12 came to work?

13 A. Not in the beginning of 2010.

14 Q. Did there ever come a time that employees signed in and  
15 out?

16 A. Yes, but by then I wasn't at the company.

17 Q. Do you know if any employees during the time that you  
18 worked for El Aguila worked more than 40 hours in the course of  
19 a week?

20 A. No.

21 Q. Did you ever discipline Mr. Java Mendoza?

22 A. Yes.

23 Q. Please tell us about that.

24 A. Well, he liked to drink. Sometimes when he would go to the  
25 basement, he would drink in hiding downstairs. And sometimes

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1 also in the bathrooms he would drink, and he would hide the  
2 beers in the bathrooms. In fact, even Mr. Juan Almonte, I had  
3 told him this, and he also discovered his bottles sometimes.

4 Q. So did you discipline him for this?

5 A. Yes. Sometimes whenever I sensed that he was drunk, I'd  
6 send him home because he was somewhat aggressive, and he -- he  
7 would use foul language.

8 Q. Between 2010 and 2014, about how many times did you send  
9 him home because he was drunk?

10 THE INTERPRETER: 2010 and 2000 --

11 MR. COSTIN: 14.

12 A. I don't have an exact amount.

13 Q. More than ten times?

14 THE INTERPRETER: Interpreter needs clarification.

15 A. Well, it -- I could say perhaps less than 20 times.

16 Q. More than 15 times?

17 A. I would not be able to specify.

18 THE COURT: Is there anything in writing that you're  
19 aware of that would reflect the times that you sent him home?

20 THE WITNESS: That's exactly why I do not know because  
21 it was never in writing.

22 THE COURT: So this is just based on your memory?

23 THE WITNESS: Yes, sir.

24 THE COURT: You may proceed, Mr. Costin.

25 BY MR. COSTIN:



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1 Q. Would you see Mr. Java in the restaurant after he got off  
2 of work at 4:00 p.m.?

3 A. Yes.

4 Q. What would he be doing, sir?

5 A. He would grab a beer from the refrigerator, and he would  
6 drink it.

7 Q. Where would he drink the beer?

8 THE INTERPRETER: The interpreter needs clarification.

9 A. At the counter. At the counter. You see, there's the bar  
10 and there are chairs there.

11 Q. How long would he stay at the bar?

12 A. He'd stay there for a while. Sometimes he'd leave and then  
13 come back.

14 Q. When you say "awhile," can you give us an idea in terms of  
15 amount of time?

16 A. Time as to hours or days?

17 Q. Well, why don't we talk about hours.

18 A. He would have a couple, and then he would leave, and then  
19 he would come back, and since I lived near the restaurant, I  
20 would then see him again at 5:00 or so. He would come back, he  
21 would come back and he was drunk.

22 Q. How late would he stay at the bar?

23 A. Hmm, I wouldn't be able to say exactly because sometimes  
24 I'd leave.

25 Q. Did you ever see him at the bar at 6:00?

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1 A. Yes.

2 Q. Did you ever see him at the bar at 7:00 at night?

3 A. Yes.

4 Q. What about 8:00 at night?

5 A. I could say that sometimes.

6 Q. What about 9:00, 9:00 at night?

7 A. 9:00, I don't believe so.

8 Q. How many days a week would you see him at the bar after  
9 work?

10 A. Three to four times.

11 Q. Did this behavior occur in 2010?

12 A. Not that many times.

13 Q. What about 2011?

14 A. Then too.

15 Q. Meaning not too many times in 2011?

16 A. Yes.

17 Q. What about 2012?

18 A. Well, that's when it started to change. He used to drink.  
19 He would drink every day.

20 Q. In 2012, he began to drink every day?

21 A. Yes.

22 Q. What about 2013?

23 A. Then too.

24 Q. What about 2014?

25 A. Then too.

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1 Q. And do you recall approximately when he began to drink  
2 every day in 2012?

3 A. He used to drink from the moment he would start going  
4 downstairs to the basement. Sometimes he would come upstairs,  
5 and he smelled like beer but he wasn't drunk.

6 Q. Did he ever drink at the bar during the working hours?

7 A. Yes.

8 Q. So he would sit at the bar and drink during the hours he  
9 was scheduled to work?

10 A. Yes, because sometimes, you see, with the taxi drivers, you  
11 know, he would prepare the pico de gallo and they would order  
12 and --

13 THE INTERPRETER: The interpreter needs to clarify a  
14 term.

15 A. They would ask for a six-pack, and since everyone there  
16 was, you know, like a family, they would just share it.

17 Q. Do you recall seeing any other employees drinking beer  
18 during their scheduled work hours between the hours of  
19 8:00 a.m. and 5:00 p.m.?

20 A. Yes.

21 Q. Did Mr. Java's drinking get worse when he started working  
22 nights in 2012?

23 A. One could say so.

24 Q. Do you know how El Aguila employees were paid during the  
25 time that you worked at El Aguila?

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1 A. They were paid in cash, and afterwards, around 2012 or '13,  
2 they started to be paid by check.

3 Q. Who was responsible for that?

4 A. Mr. Juan Almonte.

5 Q. Why do you say that?

6 A. Because he was the one who used to pay us.

7 Q. Did Santiago Almonte have a role with pay?

8 A. That would be a question for Mr. Juan Almonte.

9 Q. During the time that Mr. Java worked for you, did there  
10 ever come a time that you could not locate him during the work  
11 hours, during his scheduled work hours?

12 MS. ISAACSON: Objection, leading.

13 A. Yes.

14 THE COURT: Just one second. Don't answer yet. Let  
15 me see the question.

16 Overruled. You may answer.

17 A. Would you please repeat the question?

18 THE COURT: The question is: During the time that  
19 Mr. Java -- you keep calling him Mr. Java, but he was referring  
20 to himself as Mr. Mendoza, I think, but I assume we're talking  
21 about the same person.

22 During the time that Mr. Java worked for you, did  
23 there ever come a time that you could not locate him during the  
24 work hours, during his scheduled work hours?

25 A. Yes.

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1 Q. Tell us about those times, please.

2 A. Sometimes when he would finish cleaning the hall, you know,  
3 which is the area where the customers are, and then he would go  
4 downstairs to the basement to set something up or to organize  
5 something, and then there was a delivery or something like  
6 that, and then I would go downstairs looking for him, and I  
7 couldn't locate him, he would leave through the back door.

8 Q. How many times in a -- when did this behavior begin?

9 A. It started around 2010, 2011, 2012, 2013. He would leave  
10 out the back. He would leave without saying anything, without  
11 notifying me.

12 Q. How long would he be missing or unaccounted for?

13 A. About an hour. He would say that he was downstairs, and  
14 then I thought that he was downstairs and he'd go down there  
15 around 12:00, but then an hour and an a half -- interpreter  
16 correction -- over an hour would go by, and then I would look  
17 for him and he wasn't there.

18 Q. Did you try to contact him during that time period that you  
19 were looking for him?

20 A. No, I would not call him on the phone because I did not  
21 have his number. I would just look for him, you know, on the  
22 yard because in the back there's a yard, a parking lot, but I  
23 couldn't find him.

24 Q. Was there work that needed to be done that he should have  
25 done that he was not able to do because you could not find him?

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1 A. There might have been a delivery and he wasn't there, so I  
2 would do it myself.

3 Q. Would he eat his meals -- would he have a lunch break  
4 during the days that he disappeared?

5 A. I'm sorry. I did not understand the question.

6 Q. Sure. Did Mr. Mendoza -- during his regular workday, did  
7 he tend to have a lunch break?

8 A. Yes.

9 Q. On the days that he disappeared and was unaccounted for,  
10 did he also take a lunch break as well?

11 A. It was during that period of time, 11 -- well, he had a  
12 half hour break, so it was sometimes from 11:30 to 12:00,  
13 sometimes around 11:30.

14 Q. Did you see him eat in the restaurant? That's what I'm  
15 asking. Did you see him eat in El Aguila on the days he  
16 disappeared for about an hour or so?

17 A. He almost never ate.

18 Q. How many days a week would he disappear for about an hour  
19 or so during his scheduled workday?

20 A. Almost -- it was during his break. He would take his  
21 break, he would go downstairs to the basement, he would spend a  
22 half hour there, then he would go out, and so you'd be looking  
23 for him, I'd be looking for him, and I wouldn't find it -- find  
24 him. Interpreter correction.

25 Q. How many times a week would this occur?

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1 A. About three teams a week.

2 Q. And this between 2014 three days a week? Did I say 2010  
3 through 2014, did it occur at least three times a week.

4 A. More or less.

5 Q. Did you tell anyone in management about the fact that  
6 Mr. Mendoza was unaccounted for for at least an hour a day  
7 three times a week?

8 A. Mr. Juan Almonte.

9 Q. Was any action taken as to your conversation with Mr. Juan  
10 Almonte?

11 A. I don't know, whatever he might have told him.

12 MR. COSTIN: One moment, your Honor, please.

13 (Pause)

14 Q. Mr. Pichardo, did employees sign in when -- sign into some  
15 type of book when they arrived at work?

16 A. No.

17 Q. Do you know if management had any method of keeping track  
18 of the hours that employees worked in the restaurant between  
19 2010 and 2014?

20 A. That I remember? I don't believe so.

21 Q. Do you know if Mr. Mendoza ever took a vacation while you  
22 worked with him?

23 A. Yes. He was given a week, if I'm not mistaken.

24 Q. Do you know if he ever took any sick days?

25 A. Sick days. Well, he did miss some days of work because he

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Pichardo - Direct

1 would call in that he -- that he was drunk.

2 Q. How often --

3 THE COURT: Mr. Pichardo, when you said that he took a  
4 week of vacation, is that one week in the period of time  
5 between 2010 and 2014?

6 THE WITNESS: I believe so. I am not certain, but I  
7 believe so.

8 THE COURT: All right. Go ahead.

9 BY MR. COSTIN:

10 Q. About how many times did he call out sick because he was  
11 hung over?

12 A. I would not be able to give you a specific amount.

13 Q. More than five?

14 A. Yes.

15 Q. More than ten?

16 A. Yes.

17 Q. More than 15?

18 A. Yes.

19 Q. More than 20?

20 A. Likely, more or less.

21 Q. And this is in -- is this between the time period 2010 and  
22 2014?

23 A. Yes.

24 Q. Was Mr. Mendoza late, ever late coming to work?

25 A. Sometimes. Not all the time.



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Pichardo - Direct

1 Q. When he was late, are we talking about like a few minutes  
2 or are we talking about more than a few minutes?

3 A. Sometimes he would get there at 8:30. I wasn't there, but  
4 the female cook who was the one that would open the restaurant,  
5 she is the one that would tell me.

6 Q. That's Josephina, right?

7 A. Josephina, uh-huh.

8 MS. ISAACSON: Move to strike as hearsay.

9 THE COURT: Yes. The sentence "I wasn't there but the  
10 female cook who was the one that would open the restaurant, she  
11 is the one that would tell me," that is considered struck. The  
12 rest of the testimony remains.

13 Go ahead, Mr. Costin. Let's see if we can wrap up  
14 your direct before lunch. You seemed to be almost finished  
15 about five times, and you're taking a lot of pauses, and now I  
16 know why you don't think you're going to finish today. So  
17 let's see if we can finish before lunch, OK?

18 MR. COSTIN: Yes, your Honor.

19 Your Honor, I don't think I have any more questions.

20 THE COURT: All right. I assume your direct is longer  
21 than five minutes. I mean, your cross is longer than five  
22 minutes.

23 MS. ISAACSON: Yes, your Honor.

24 THE COURT: We will take a lunch break now and return  
25 promptly at 2:00.

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Pichardo - Cross

1 (Luncheon recess)

2 AFTERNOON SESSION

3 2:10 p.m.

4 THE COURT: Mr. Pichardo, would you please come back  
5 to the witness stand.

6 Pedro Pichardo, resumed.

7 THE COURT: Ms. Isaacson, you may proceed.

8 CROSS-EXAMINATION

9 BY MS. ISAACSON:

10 Q. Good afternoon, Mr. Pichardo.

11 A. Good afternoon.

12 Q. Are you represented by Mr. Costin?

13 A. Does he represent me? I'm a witness.

14 Q. Yes. I asked if you were represented by Mr. Costin.

15 THE COURT: He may not understand what you mean by  
16 that question.

17 A. I don't understand.

18 Q. Is Mr. Costin, the individual sitting here, your attorney?

19 A. No, he's Mr. Almonte's attorney.

20 Q. Did you discuss your testimony with Mr. Costin before  
21 coming here today?

22 A. No.

23 Q. Did you discuss your testimony today with Juan Almonte?

24 A. No.

25 Q. Did you discuss your testimony today with Santiago Almonte?

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Pichardo - Cross

1 A. No.

2 Q. Are you being paid to testify today?

3 A. No.

4 Q. You were a manager of El Aguila Bar, correct?

5 A. Manager.

6 Q. So yes?

7 A. Yes.

8 Q. And you were a manager of El Aguila from 2008 to 2014,  
9 correct?

10 A. Yes.

11 Q. And you were the day manager, correct?

12 A. Day manager, yes.

13 Q. Santiago Almonte was also a manager at El Aguila, correct?

14 A. He was the general manager. I hardly had anything to do  
15 with him because -- I didn't really report to anybody because I  
16 was doing my job.

17 Q. That's not exactly my question.

18 I am asking if Santiago Almonte was the night manager  
19 at El Aguila while you worked there?

20 A. Yes.

21 Q. And you didn't see Santiago Almonte often at El Aguila  
22 because you worked the morning shift and he worked at night,  
23 correct?

24 A. Yes, I was living near El Aguila at the time, like about  
25 20 feet away.

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Pichardo - Cross

1 Q. OK. I just want to make sure you understand my question  
2 because I'm not asking where you lived.

3 I just want to ask if you saw Santiago often at --  
4 that you didn't see Santiago Almonte often at El Aguila because  
5 he worked at night and you worked during the day, correct?

6 A. I would see him every so often. Sometimes, yes.

7 Q. And now I'm going to ask you about Juan Almonte.

8 Juan Almonte was the owner of El Aguila, right?

9 A. Yes.

10 Q. And Juan Almonte was the person who could decide to hire  
11 additional employees at El Aguila, correct?

12 A. Yes.

13 Q. And Juan Almonte was also in charge of hiring employees,  
14 correct?

15 A. Yes.

16 Q. And Juan Almonte was also in charge of firing employees,  
17 correct?

18 A. I'm sorry, I didn't understand.

19 Q. Juan Almonte was in charge of firing employees. If someone  
20 was going to be fired, it was going to be by Juan Almonte,  
21 correct?

22 A. Yes, he was the owner. Yes.

23 Q. And Juan Almonte determined how much employees were paid at  
24 El Aguila, correct?

25 A. I assume so because he was the owner.

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Pichardo - Cross

1 Q. OK. And you testified earlier today that El Aguila opened  
2 to the public at around 10:00 or 11:00 a.m. every day, correct?

3 A. Yes.

4 Q. And you worked at El Aguila for about six years, so you  
5 know that information, correct?

6 A. Yes. Yes.

7 Q. And do you recall being asked questions and giving answers  
8 at your deposition in this case?

9 A. I did not understand your question.

10 Q. Do you recall when you were -- when Mr. Shawn Clark took  
11 the deposition of you on February 13, 2018?

12 A. Yes.

13 Q. And at the deposition, you took an oath and swore to tell  
14 the truth while testifying in the deposition, correct?

15 A. Yes.

16 Q. And after the deposition, the questions and answers were  
17 typed up verbatim into a transcript that was given to you to  
18 review, correct?

19 A. Nothing was given to me, and I did not review anything.

20 THE COURT: Do you have a copy for the Court of a  
21 transcript?

22 MS. ISAACSON: Yes. May I approach?

23 THE COURT: You may.

24 THE INTERPRETER: If questions are going to be asked  
25 from the transcript, the interpreter would also request a copy.

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Pichardo - Cross

1 THE COURT: Mr. Costin, do you have a copy of the  
2 transcript?

3 MR. COSTIN: Yes, your Honor.

4 THE COURT: All right.

5 BY MS. ISAACSON:

6 Q. I am now going to read the following questions and answers  
7 of this witness taken on February 13, 2018, beginning on page  
8 35, line 11.

9 THE COURT: Well, just one second. What I see there  
10 has nothing to do with what you have just been asking him  
11 about.

12 You can't just read questions and answers from a  
13 deposition. You can do it to impeach, but the last line of  
14 questions have absolutely nothing to do with the hours that the  
15 restaurant was open, Ms. Isaacson, so I don't understand why  
16 you're starting on page 35, line 11. That has nothing to do  
17 with the questions you were just asking him about.

18 MS. ISAACSON: I thought I just asked him when it was  
19 open to the public, and he has said today it was from 10:00 to  
20 11:00.

21 THE COURT: Just one second.

22 OK, go ahead.

23 BY MS. ISAACSON:

24 Q. The question was:

25 "Q. When was it open is to the public?

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Pichardo - Cross

1 "A. It would open like around 9:00 a.m. to 11:00.

2 "Q. 9:00 a.m. to 10:00 p.m.?"

3 THE COURT: You're going to have to read slowly and  
4 read it this way:

5 "Q. Question. Answer. Question. Answer. And read slowly.  
6 OK?

7 Go ahead, start again.

8 Q. "Q. When was it open to the public?

9 "A. It would open like around from 9 to 10.

10 "Q. 9:00 a.m. to 10:00 p.m.?"

11 "A. No. On my schedule, it would open in the morning for the  
12 public from 9 to 10. That was for the public.

13 "Q. When you say 9, 9:00 a.m.?"

14 "A. In the morning.

15 "Q. And then from 10:00 p.m.?"

16 "A. No, from 9:00 a.m. to 10:00 a.m. That was the hours that  
17 we would open for the public. That was the hours that we would  
18 open in the morning."

19 Q. Do you recall being asked those questions and giving those  
20 answers at your deposition?

21 A. Yes.

22 Q. And you normally worked every day at El Aguila from  
23 9:00 a.m. to 5:00 p.m., correct?

24 A. Yes.

25 Q. And you testified that aside from night shift, Mr. Mendoza

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Pichardo - Cross

1 Java came in every day at 8:00 a.m., correct?

2 A. His work schedule on the days he was working would start at  
3 8:00 a.m. until 4:00 p.m.

4 THE COURT: Ms. Isaacson, just a point of practice: I  
5 don't like when lawyers on cross-examine say, "you testified on  
6 direct that X," OK? Whatever he testified on direct, he  
7 testified and the record will reflect it. If you want to say  
8 and re-confirm some fact, you are absolutely free to do that on  
9 cross. But I would prefer that you not formulate your question  
10 by suggesting that the testimony was a certain thing. The  
11 testimony is whatever it was.

12 So you can ask the question, but it would be, "You say  
13 that he worked from," not "you testified that" because his  
14 testimony is whatever it was, and I don't want you  
15 characterizing it because you may be right or you may be wrong.  
16 OK?

17 MS. ISAACSON: OK.

18 THE COURT: Go ahead.

19 BY MS. ISAACSON:

20 Q. You never actually observed what time Mr. Mendoza Java came  
21 in to work each day because you came in after him, correct?

22 A. Yes.

23 Q. And Mr. Mendoza Java stopped working each day at 4:00 p.m.,  
24 correct?

25 A. Yes.



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Pichardo - Cross

1 Q. And you left work each day at 5:00 p.m., correct?

2 A. Yes, that was my end time.

3 Q. And you would see Mr. Mendoza Java at 6:00 drinking beer at  
4 the bar, correct?

5 A. I'm sorry, I did not understand.

6 Q. You would frequently see Mr. Mendoza Java drinking beer at  
7 the bar around 6:00 p.m., correct?

8 A. Sometimes I said.

9 Q. And you would sometimes see Mr. Mendoza Java at 7:00 p.m.  
10 drinking at the bar after work, correct?

11 A. Sometimes. Sometimes.

12 Q. But you would leave work at 5:00 p.m., correct?

13 A. Yes.

14 Q. When Mr. Mendoza Java started working at night, he would  
15 work until 4:00 a.m., correct?

16 A. That would be a question for Mr. Almonte because I wasn't  
17 working at that time, and I wasn't there then.

18 Q. OK. And you never recorded when Mr. Mendoza Java left work  
19 each day, correct?

20 A. No.

21 Q. And there was no time clock or punch-in system at El Aguila  
22 when you worked there to record when Mr. Mendoza Java left work  
23 each day?

24 A. No. That was all implemented after 2014, after I was no  
25 longer there.

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Pichardo - Cross

1 Q. So you never observed this system being implemented,  
2 correct?

3 A. Not during the time I was there. During the time that we  
4 were working there, we always had the same regular schedule  
5 starting at 8:00. That is to say, starting from 8:00 till 4:00  
6 Mr. Mendoza had his schedule, and all the employees had their  
7 own schedule and their own starting times and end times.

8 Q. And Mr. Mendoza Java took 30 minute lunch breaks throughout  
9 his employment, correct?

10 A. Yes.

11 Q. And those 30 minute lunch breaks would always start between  
12 11:00 a.m. and 12:00 p.m., correct?

13 A. Yes.

14 Q. And Mr. Mendoza Java would go down to the basement for 30  
15 minutes and then escape out the back door, correct?

16 A. Yes. He would always -- practically you could say that.  
17 He would always go downstairs to take his break, and then  
18 sometimes you wouldn't think about it until he had gone  
19 downstairs to take his break and it was already 12:00, and you  
20 would go down there and look for him and he wasn't there.

21 Q. So you never actually observed him escape out the back  
22 door, correct?

23 A. No, but the conclusion is that he was leaving because I  
24 would go downstairs to the basement and he wouldn't be there.

25 Q. So you assumed he escaped out the back door, correct?

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Pichardo - Cross

1 A. If he wasn't downstairs in the basement, where else would  
2 he be?

3 Q. Mr. Mendoza Java was never given anything in writing when  
4 he was hired about how much he was going to be paid, correct?

5 A. I don't know about Mr. Juan Almonte when he hired him what  
6 they did because they decided amongst themselves what he would  
7 be paid when he was hired, and I wasn't involved in that  
8 because I did not pay Mexico.

9 THE COURT: Just for the record, when you say  
10 "Mexico," you're referring to Mr. Mendoza Java?

11 THE WITNESS: Yes. We never called him by his true  
12 name. We always used to call him Mexico.

13 Q. You testified that Mr. Mendoza Java didn't drink very much  
14 in 2010, correct? Mr. Mendoza Java didn't drink very much in  
15 2010, correct?

16 A. Yes. He didn't drink that much, but he did drink.

17 Q. And he didn't drink very much in 2011, correct?

18 A. Yes.

19 Q. I'm going to turn back to the deposition transcript where  
20 you had previously stated you recalled being asked questions  
21 and giving answers at the deposition. I'm going to read the  
22 following questions and answers from the deposition taken on  
23 February 13, 2018 beginning at page 59, line 5.

24 We'll start at line 2, actually.

25 "Q. OK. So you're saying he started drinking in 2010. Am I

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Pichardo - Cross

1 understanding that correctly?

2 "A. Yes, he drank a lot in 2010, 2010. Yes, to 2014. And  
3 during the time that I was working there, he drank every day.  
4 Every day."

5 Q. Do you recall being asked those questions and giving those  
6 answers at your deposition?

7 A. Yes. Yes --

8 THE COURT: No, Mr. Pichardo, there is no question  
9 pending.

10 THE WITNESS: OK.

11 THE COURT: Next question, please.

12 Q. Mr. Mendoza Java would go to the bathroom and hide  
13 drinking, correct?

14 A. Yes.

15 Q. But you never actually observed him drinking in the  
16 bathroom, correct?

17 A. Yes.

18 Q. And Mr. Mendoza Java -- you sent Mr. Mendoza Java home for  
19 being drunk on the job less than 20 times over the course of  
20 four years, correct?

21 A. Uh-huh, between 20 to 25 times on down, yes. It's not a  
22 specific number.

23 Q. And there is never any record of these suspensions in  
24 writing, correct?

25 A. No.

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Pichardo - Cross

1 Q. And there was also never any record of discipline of  
2 Mr. Mendoza Java in writing, correct?

3 A. I would just simply tell Mr. Juan Almonte, and I don't know  
4 what he said or did to Mr. Java. I don't know if he said  
5 anything or do anything to discipline Mr. Mendoza Java.

6 Q. And you didn't have the power to fire Mr. Mendoza Java,  
7 correct?

8 A. No. If I had had it, I would have done it.

9 Q. And each time that you sent Mr. Mendoza Java home, you  
10 would tell Mr. Juan Almonte that you sent him home because he  
11 was drunk, correct?

12 A. Yes, and for being disrespectful.

13 Q. To your knowledge, despite telling Juan Almonte about these  
14 incidents, Mr. Juan Almonte never fired Mr. Mendoza Java during  
15 the time that you worked there, correct?

16 A. No.

17 Q. And Mr. --

18 THE COURT: Just to be clear, because we use these  
19 formulations. You said "is it correct" and he said "no." But  
20 I think by saying "no," he is agreeing with you that what you  
21 said is correct.

22 Just so that the record is clear, let's confirm that.

23 Q. So is it correct that despite telling Juan Almonte about  
24 these incidents, he never fired Mr. Mendoza Java during the  
25 time you worked there?

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Pichardo - Cross

1 A. That is correct.

2 Q. And you also told Juan Almonte that Mr. Mendoza Java would  
3 be missing three times a week for an hour and a half, correct?

4 A. More or less.

5 Q. To your knowledge, did Mr. Juan Almonte --

6 THE COURT: Hold on a second. I'm sorry but precision  
7 is important.

8 When you say "more or less," is more or less related  
9 to three times or more or less whether you told that to  
10 Mr. Almonte or not?

11 THE WITNESS: Twice, sometimes three times. I would  
12 just find out about it when he would go downstairs to the  
13 basement and I couldn't find him. I would assume that he was  
14 there, and then he wasn't there.

15 THE COURT: Would you always tell Mr. Almonte when he  
16 was not there?

17 THE WITNESS: Yes. Not always but almost always.

18 THE COURT: All right. You may proceed.

19 BY MS. ISAACSON:

20 Q. To your knowledge, despite telling Juan Almonte that  
21 Mr. Mendoza Java was missing for an hour at a time, did he ever  
22 fire -- strike it.

23 To your knowledge, despite telling Juan Almonte about  
24 these incidents of Mr. Mendoza Java leaving for an hour at a  
25 time two to three times a week, Mr. Almonte never fired

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Pichardo - Redirect

1 Mr. Mendoza Java for that, correct?

2 A. Yes, and I never understood why.

3 Q. Mr. Mendoza Java drank at work every day from 2010 to 2014,  
4 correct?

5 A. He would, yes.

6 MS. ISAACSON: No further questions.

7 THE COURT: Redirect, Mr. Costin?

8 MR. COSTIN: Yes. Just one small area, your Honor.

9 THE COURT: Be careful when you say that. I'm going  
10 to hold you to one small area.

11 MR. COSTIN: It's all relative.

12 THE COURT: Exactly. So be careful what you're  
13 proffering.

14 REDIRECT EXAMINATION

15 BY MR. COSTIN:

16 Q. Mr. Pichardo, there was a discrepancy between what you  
17 testified --

18 THE COURT: No. No. No. No. Ask a question. No  
19 commentary, please.

20 MR. COSTIN: Sure.

21 Q. Did Mr. Mendoza drink heavily between 2010 and 2014 as you  
22 testified to in your deposition?

23 A. He would drink every day between 2010 and 2014, but between  
24 2012 and 2014, he would drink more. That is to say he did  
25 drink every day between 2010 and 2014, but beginning in 2012 he

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S. Almonte - Direct

1 started to drink more heavily because he was drinking at the  
2 restaurant.

3 MR. COSTIN: Nothing further, your Honor.

4 THE COURT: All right. Mr. Pichardo, you may step  
5 down.

6 Do you have any recross?

7 MS. ISAACSON: No, your Honor.

8 THE COURT: All right. You may step down.

9 (Witness excused)

10 THE COURT: Mr. Costin, call your next witness,  
11 please.

12 MR. COSTIN: Mr. Santiago Almonte.

13 THE COURT: Just to remind everyone, his testimony is  
14 limited to what I will characterize as damages testimony, not  
15 liability testimony, so we have to be careful about the line of  
16 questioning you are going to pursue so because I'm going to cut  
17 you off if you go beyond the line. So let's see where you go  
18 we'll see if there are objections, and we'll see if I have my  
19 own objections. Let's swear the witness, please.

20 SANTIAGO VALENTIN ALMONTE,

21 called as a witness by the Defendant,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. COSTIN:

25 THE COURT: You may proceed.



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S. Almonte - Direct

1 Q. Mr. Almonte, when did you work with El Aguila -- work for  
2 El Aguila?

3 A. Since 2008.

4 Q. What was your job title?

5 A. General manager.

6 Q. What were your duties?

7 MS. ISAACSON: Objection.

8 THE COURT: Overruled.

9 We have to have some predicate here, OK? So I'm going  
10 to use common sense. It's a non-jury trial. Think of it as  
11 the equivalent of an affidavit. If this was the second  
12 paragraph of the affidavit in which he's describing his  
13 responsibilities, I don't think you would move to strike that  
14 paragraph.

15 We will know when Mr. Costin is treading beyond the  
16 line, and I'm sure you will be on your feet.

17 Go ahead. That can be answered.

18 what were your duties, Mr. Almonte?

19 A. I would hold meetings with certain people who would look  
20 for work. I would hold events to rent the business. I would  
21 reach the agreements. I would take notes, and I would give  
22 those to Mr. Almonte. If there was a list that employees were  
23 needed, such was given to me, I would then interview the  
24 persons that were looking for work and then I would give that  
25 to Mr. Almonte.

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S. Almonte - Direct

1 THE COURT: When you say "I would give it to  
2 Mr. Almonte," you mean Juan Almonte?

3 THE WITNESS: Yes, sir, that's correct.

4 THE COURT: And Juan Almonte is your brother?

5 THE WITNESS: Yes.

6 BY MR. COSTIN:

7 Q. Who was the owner of El Aguila?

8 MS. ISAACSON: Objection. I think this is beyond the  
9 scope of setting the damages.

10 THE COURT: I think it's still what I will  
11 characterize as introductory in nature.

12 So it's overruled. You may answer.

13 THE INTERPRETER: Your Honor, the interpreter will  
14 interpret the answer given.

15 A. The only owner on record is Mr. Almonte.

16 THE COURT: You mean Mr. Juan Almonte?

17 THE WITNESS: Mr. Juan Almonte.

18 BY MR. COSTIN:

19 Q. Were there any owners not on record?

20 A. Not that I know of.

21 Q. Were there shifts at El Aguila?

22 THE COURT: OK. Here, Mr. Costin, is where I think  
23 you are starting to cross the line. Let me tell you what I  
24 have in mind as far as what I think is proper.

25 MR. COSTIN: Sure.

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S. Almonte - Direct

1 THE COURT: The issue here in the case as far as  
2 damages is concerned is if liability is established, how would  
3 one calculate Mr. Mendoza Java's damages. The way damages are  
4 calculated in these cases, as you well know, involve what hours  
5 did someone work, what they were paid, whether that changed,  
6 who paid it, in what form, etc. That's damages-related subject  
7 matter.

8 It seems to me the last question you were starting to  
9 ask was in terms of different shifts.

10 MR. COSTIN: Yes.

11 THE COURT: I'm not sure why that is going to be  
12 relevant to any testimony with respect to damages here.

13 MR. COSTIN: Understood, your Honor.

14 THE COURT: OK? Now, Mr. Juan Almonte, obviously, is  
15 going to be free to testify in a more free-ranging fashion. So  
16 what you're frustrated in not being able to elicit from this  
17 particular witness, I suspect you can pursue more  
18 comprehensively, if you will, with Mr. Juan Almonte, but just  
19 keep in mind my prior ruling which I'm going to hold you to.

20 MR. COSTIN: Understood, your Honor. Thank you.

21 THE COURT: This is the equivalent of an inquest, if  
22 you will.

23 MR. COSTIN: Yes.

24 THE COURT: And I'm trying to give you some latitude  
25 to set a foundation, if you will, but I feel like I've now

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S. Almonte - Direct

1 given you that. I don't know if there is anything else that  
2 falls into that category; otherwise, it seems to me his  
3 testimony is going to be somewhat circumscribed.

4 MR. COSTIN: Your Honor, I appreciate what you are  
5 saying, and I will do my utmost to comply.

6 THE COURT: I'm sure you will, and I'm sure  
7 Ms. Isaacson will let me know if she disagrees with whether  
8 your utmost sufficient consistent with my legal ruling.

9 MR. COSTIN: Understood.

10 BY MR. COSTIN:

11 Q. Mr. Mendoza's schedule, do you recall his schedule during  
12 the time that he worked at El Aguila?

13 THE INTERPRETER: For the interpreter, the last part  
14 "during the time that"?

15 MR. COSTIN: He worked for El Aguila.

16 A. He started working from 8:00 to 4:00 five days a week.

17 THE COURT: What year was that, to your knowledge?

18 THE WITNESS: He started in 2008.

19 THE COURT: How many years is it your understanding he  
20 worked those hours when you said "he started working those  
21 hours," what are you talking about?

22 THE WITNESS: I do not recall exactly because I wasn't  
23 quite in charge of those schedule concerns, but I do believe  
24 that it was in 2010.

25 THE COURT: Go ahead, Mr. Costin.

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S. Almonte - Direct

1  
2 BY MR. COSTIN:

3 Q. Did Mr. Mendoza ever work overtime for El Aguila?

4 MS. ISAACSON: Objection. I think that's beyond the  
5 scope of damages.

6 THE COURT: I think that particular question as you  
7 have phrased it, I will sustain the objection.

8 MR. COSTIN: I will rephrase.

9 Q. Did Mr. Mendoza ever work more than 40 hours per week  
10 during his employment with El Aguila?

11 A. Not that I recall.

12 Q. Why?

13 A. Because at that time, 40 hours was the week of work at a  
14 minimum wage.

15 Q. Between 2010 and 2016, Mr. Mendoza work more than five days  
16 in the course of one week?

17 A. No, never more than 40 hours. As a matter of fact, it was  
18 less because he had way too many appointments that according to  
19 him they were medical appointments or he had accidents.

20 THE COURT: Or he had, what was the last thing you  
21 said?

22 THE INTERPRETER: Accidents.

23 Q. What do you mean by accidents?

24 A. A loose bullet, as he explained it to me, which cut him in  
25 one of the legs. He was absent for a couple of weeks. I went

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S. Almonte - Direct

1 to his house to visit with him and to drop off his check.

2 Q. When was this, sir?

3 A. I do not recall exactly, but in 2015, at the end of 2015.

4 Q. Approximately how much time did he miss from work due to  
5 the accident?

6 A. I do not recall exactly.

7 Q. Was he ever out of work for at least a week due to the  
8 bullet?

9 A. More.

10 Q. What about two weeks?

11 A. I do not quite recall, as I already said, but I believe  
12 that two or three weeks.

13 Q. Did he have any other medical appointments besides dealing  
14 with the bullet?

15 A. He took a document for my signature. Since I was a general  
16 manager, I asked him what he needed this for and that's when he  
17 started to do --

18 THE INTERPRETER: The interpreter needs  
19 clarification --

20 A. Then he started to create certain records because he told  
21 me that what he needed that for was for him to be provided with  
22 an ITIN number.

23 MS. ISAACSON: I move to strike. That wasn't  
24 responsive to the question. It doesn't have to do with any  
25 time he took off of work.

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S. Almonte - Direct

1 THE COURT: Yes, I agree, it's not responsive to the  
2 question. The last part of the answer is struck.

3 Q. Do you know when Mr. Mendoza received an ITIN number?

4 MS. ISAACSON: Objection.

5 THE COURT: Sustained. Next question.

6 Q. Did El Aguila keep track of the hours that Mr. Mendoza  
7 worked?

8 A. No.

9 Q. Why?

10 A. He had a schedule from 8:00 to 4:00, and later on it was  
11 changed to 10:00 to 6:00, and we did have that record because  
12 it was his regular schedule.

13 Q. When did his schedule change from 10:00 a.m. to 6:00 p.m.?

14 A. I do not quite remember, but it was when there was some  
15 remodeling done.

16 Q. What role, if any, did you have with payroll?

17 A. Well, my role is, or was, because the company -- because  
18 the business has now closed down -- it was to keep or gather  
19 data of hours or schedules that were worked, give them to  
20 Mr. Juan Almonte. And then Mr. Almonte went ahead and  
21 conducted the payments or the checks. And then also with ADP,  
22 the hours were sent to them at the time that the official work  
23 started with them signing in and punching in. And it is at  
24 that time that Mr. Mendoza started to report or create a record  
25 because then a new contract was drawn up.

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1 THE COURT: Let's have another question, Mr. Costin.

2 Q. You indicated that you would keep track of the hours worked  
3 by Mr. Mendoza. How did you do that?

4 A. Because, as I said, his regular schedule was 8:00 to 4:00.

5 Q. How would you know if Mr. Mendoza came to work?

6 A. There was -- that was his schedule, and I didn't receive  
7 any complaints from the manager during that shift.

8 Q. Would you see Mr. Mendoza in El Aguila during his work  
9 schedule?

10 A. Yes.

11 Q. And how many times a week would you say you saw him at work  
12 during his work hours?

13 A. Perhaps three to four times a week during his work week,  
14 but I would just come in to attend certain meetings, then I  
15 would leave.

16 Q. Was Mr. Mendoza ever scheduled to work -- withdrawn. After  
17 Mr. Mendoza completed his working schedule, would you see him  
18 still in El Aguila?

19 A. Sometimes.

20 Q. Would he be engaged in any work for El Aguila during that  
21 time period?

22 MS. ISAACSON: Objection. Leading.

23 THE COURT: Sustained and confusing.

24 You said would you see him after he finished his work,  
25 and then you asked him if he would be engaged in any work after



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1 he wasn't working, so I don't understand what you mean. So the  
2 objection is sustained. Either rephrase it or ask a different  
3 question.

4 MR. COSTIN: I will move on.

5 Q. Did El Aguila ever have a specific book that kept --  
6 withdrawn. Withdrawn. Withdrawn.

7 Did Mr. Mendoza work at Las Banderas?

8 A. No.

9 Q. Did he ever perform at work at Las Banderas?

10 A. He would go there to help out once he would get out of  
11 El Aguila.

12 THE COURT: I'm a little confused. Your first  
13 question was did he work there. The answer was no.

14 Then the next question was did he ever perform work  
15 there. So if he didn't work there, what does performing work  
16 as opposed to work -- what does the distinction mean,  
17 Mr. Costin. I don't understand that.

18 MR. COSTIN: Well, it got an answer, your Honor.

19 THE COURT: What's that?

20 MR. COSTIN: It engendered an answer.

21 THE COURT: I don't really understand the answer.

22 He would go there to help once he would get out of  
23 El Aguila. What does that mean?

24 He would go to help, meaning he was helping as a  
25 worker who should have been paid for work or something else?

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S. Almonte - Direct

1 The whole record is completely unclear on the point.

2 MR. COSTIN: I understand, your Honor. I'm trying to  
3 get a clarification. I asked him if he worked. Then I asked  
4 him -- I'm trying to get a clarification of that, your Honor.

5 THE COURT: Well, if he didn't work -- either he  
6 worked there or he didn't work there, right?

7 What does it mean as you then asked: "Did he perform  
8 work? If he didn't work, is there some distinction that is  
9 lost on me.

10 MR. COSTIN: Your Honor, I think the distinction is  
11 with this witness. That's why I'm trying to get a  
12 clarification. That's why I rephrased that question in that  
13 manner.

14 THE COURT: Mr. Almonte, did Mr. Mendoza perform work  
15 at Las Banderas of any kind: Cleaning, waiting, cooking or  
16 anything else?

17 THE WITNESS: Yes.

18 THE COURT: What did he do?

19 THE WITNESS: On Saturdays he would go there from  
20 4:00 p.m. to 6:00 to receive deliveries, and if there was any  
21 time left for him, then he would do some cleaning, but I see it  
22 as help because it was during the -- his work hours at  
23 El Aguila.

24 THE COURT: I could ask many follow-up questions, but  
25 that's not really my job in the first instance.

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S. Almonte - Direct

1 I will let you do that, Mr. Costin, as long as I could  
2 understand what you're asking.

3 MR. COSTIN: Understood.

4 BY MR. COSTIN:

5 Q. Did you pay him for the time that he spent at Las Banderas?

6 A. I would give him \$40 as a tip.

7 Q. How often did he come -- during what time period did he  
8 come and work or perform work at Las Banderas?

9 A. On Saturdays during a time frame between four to eight  
10 months.

11 Q. In what year or years?

12 A. 2015, the end of 2015.

13 THE COURT: I'm confused now.

14 Mr. Almonte, what is your understanding of the normal  
15 days of the week that Mr. Mendoza worked for El Aguila?

16 THE WITNESS: Five days, eight hours, and then in the  
17 latter years, he would work, do some work and he had Sundays  
18 off, Tuesdays, and that is while -- on Saturdays after  
19 4:00 p.m. it is that he would accept deliveries, as he  
20 mentioned previously, and do some cleaning.

21 THE COURT: Are you saying that there was a period of  
22 time in which of the five days that he worked, one of them was  
23 Saturday?

24 THE WITNESS: That's correct, yes, sir.

25 THE COURT: Are you saying that during that period,

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1 the hours were from 10:00 to 6:00 p.m.?

2 THE WITNESS: That's correct.

3 THE COURT: And are you saying that instead of working  
4 the last two hours on a Saturday at El Aguila, as he would have  
5 on the other days, he instead was working those two hours at  
6 Las Banderas, the 4:00 to 6:00 you've been talking about?

7 THE WITNESS: Yes, that's correct.

8 THE COURT: So, in other words, it wasn't in addition  
9 to his work at El Aguila; it was instead of his work at  
10 El Aguila. Is that your testimony?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: And yet you have testified that you paid  
13 him \$40 as a tip for these two hours beyond his regular wages?

14 THE WITNESS: That's correct.

15 THE COURT: What's the reason for that?

16 THE WITNESS: The reason why I would give him that  
17 extra money or the tip, it was based on his willingness to go  
18 from El Aguila to help me at the other location to accept  
19 deliveries.

20 THE COURT: How far apart are the two restaurants  
21 geographically.

22 THE WITNESS: Two full blocks. 170th --

23 THE INTERPRETER: The interpreter is repeating  
24 phonetically.

25 THE WITNESS: Ogden to 172nd, 171st University.

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1 THE COURT: All right. You may proceed, Mr. Costin.

2 MR. COSTIN: Thank you.

3 Just for the record again, O-G-D-E-N.

4 THE COURT: It's not a question. He's just stating it  
5 for the record.

6 Anything else, Mr. Costin?

7 MR. COSTIN: Nothing further, your Honor.

8 THE COURT: Ms. Isaacson.

9 CROSS-EXAMINATION

10 BY MS. ISAACSON:

11 Q. Good afternoon, Mr. Almonte.

12 A. Good afternoon.

13 Q. Are you represented by Mr. Costin?

14 A. No.

15 Q. Did you discuss your testimony with Mr. Costin before  
16 coming here today?

17 A. No. I didn't even know that I'd be testifying.

18 Q. You've been aware of this lawsuit since at least  
19 November 2016, correct?

20 MR. COSTIN: Objection, your Honor.

21 THE COURT: What's the objection?

22 MR. COSTIN: It's beyond the scope of cross -- excuse  
23 me -- beyond the scope of direct, and it also goes beyond  
24 issues of damages which is what he is here to testify about.

25 THE COURT: I mean, he's in default. If you're trying

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1 to prove he is in default, he is in default, and I already said  
2 as much this morning, so I will sustain the objection because  
3 I'm not really sure what he's advancing.

4 MS. ISAACSON: OK.

5 THE COURT: Ask your next question, please.

6 BY MS. ISAACSON:

7 Q. Mr. Mendoza Java worked at El Aguila, correct?

8 A. Yes.

9 Q. You were a night manager at El Aguila, correct?

10 A. General.

11 Q. That's not exactly responsive to my question. Were you --

12 THE COURT: Don't argue with him, please. Just ask  
13 another question, with all due respect. It's not for you to  
14 say that. Just ask another question.

15 Q. Mr. Mendoza Java worked for you at Las Banderas, correct?

16 A. On Saturdays starting at 4:00 while working his shift as I  
17 just explained.

18 Q. You paid Mr. Mendoza Java solely in cash until 2015  
19 correct?

20 A. I did not understand that question.

21 Q. You paid Mr. Mendoza Java his wages in cash until the end  
22 of 2015, correct?

23 A. No, that's not correct. I would give him a tip whenever he  
24 would go to work at Las Banderas because the one that would  
25 make the payments was Mr. Juan Almonte.

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S. Almonte - Cross

1 Q. Mr. Mendoza Java was paid solely in cash until the end of  
2 2015, correct?

3 MR. COSTIN: Just objection. As to El Aguila or  
4 Las Banderas. That's my objection. I'm confused that's all.

5 THE COURT: Objection on the basis of confusion?

6 MR. COSTIN: Yes, your Honor.

7 THE COURT: Is the word "confusion" in the Federal  
8 Rules of Evidence. I think it's objectionable because there's  
9 a lack of foundation, so I'll sustain it on that basis, but not  
10 on the basis of confusion.

11 Ask another question, Counselor.

12 BY MS. ISAACSON:

13 Q. You rarely worked at El Aguila during the day, correct?

14 A. That's correct, very rarely.

15 Q. Mr. Mendoza Java worked from 8:00 a.m. to 4:00 p.m. at  
16 El Aguila, correct?

17 A. That's correct.

18 Q. But you were rarely there to observe that, correct?

19 A. I would go there three to four times a week to hold  
20 meetings, as I just explained, and I would see him then.

21 Q. Mr. Mendoza Java worked at El Aguila at a certain point  
22 from 10:00 a.m. to 6:00 p.m., correct?

23 A. That's correct.

24 Q. And you kept track of Mr. Mendoza Java's hours, correct?

25 A. Yes, he had a regular schedule, and that's how that was

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1 determined.

2 Q. But you did not have any documentation reflecting  
3 Mr. Mendoza Java's entrance and exit times for his work days,  
4 correct?

5 A. Please repeat that question for me.

6 Q. But you did not have any documentation reflecting  
7 Mr. Mendoza Java's entrance and exit times for his work days at  
8 El Aguila, correct?

9 A. There was documentation. He was given his salary based on  
10 the time he worked.

11 Q. So you kept employment records connected to Mr. Mendoza  
12 Java's work, correct?

13 A. Five days, eight hours, that's how he was paid. That's how  
14 the records were sent to Juan Almonte.

15 Q. And you have documentation, correct?

16 A. He explained it that he had to have his payment correct.

17 THE COURT: I don't understand that answer.

18 THE INTERPRETER: Interpreter's correction.

19 He just explained that he received the correct  
20 payment.

21 THE COURT: The question was: You have documentation.  
22 You, Mr. Almonte as an employer, as the general manager, you  
23 have documentation that shows the hours that Mr. Mendoza  
24 worked, correct?

25 THE WITNESS: I just explained that he was working



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1 five days, and I would pass on that information to Mr. Juan  
2 Almonte.

3 THE COURT: Mr. Almonte, are there any pieces of paper  
4 that you have that reflect the hours that Mr. Mendoza worked  
5 for any point in time during his employment?

6 THE WITNESS: In the final years when he was working  
7 30 hours and being paid in cash, there are records, there are  
8 some records.

9 THE COURT: What period of time are you talking about?

10 THE WITNESS: The final years.

11 THE INTERPRETER: Interpreter's correction, the final  
12 year when he began reporting.

13 THE COURT: You mean 2015-2016?

14 THE WITNESS: No -- yes, because before that there  
15 wasn't -- well, the schedule was just made with the regular  
16 hours.

17 THE COURT: Go ahead, Ms. Isaacson.

18 BY MS. ISAACSON:

19 Q. During the time that Mr. Mendoza Java worked from 8:00 a.m.  
20 to 4:00 p.m., you rarely observed him arrive in the morning,  
21 correct?

22 A. Practically never, that's correct.

23 Q. And during the time that Mr. Mendoza worked from 8:00 to  
24 4:00 p.m. you never observed when he would leave work,  
25 correct -- you rarely observed when he would leave work,

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1 correct?

2 A. I was not there at specific times.

3 Q. And during the time that Mr. Mendoza Java worked from  
4 10:00 a.m. to 6:00 p.m., you rarely observed when he would  
5 arrive in the morning, correct?

6 A. Very rarely. Perhaps once.

7 Q. And during the time period that Mr. Mendoza Java worked  
8 from 10:00 a.m. to 6:00 p.m., you rarely observed when he would  
9 leave work at the end of the day, correct?

10 A. He had his schedule when he would leave at 6:00.

11 THE COURT: That wasn't really the question. The  
12 question was: Did you see him when he left at 6:00?

13 THE WITNESS: Yes, I did see him many times.

14 THE COURT: You saw him when he'd leave work at the  
15 end of the day?

16 THE WITNESS: Sometimes, as I explained.

17 BY MS. ISAACSON:

18 Q. And you never received any complaints from a manager about  
19 Mr. Mendoza Java, correct?

20 A. Were they received? Yes, I did receive them.

21 Q. You never gave Mr. Mendoza Java anything in writing when he  
22 was hired about how much he was going to be paid, correct?

23 A. I didn't really understand the question.

24 Q. When Mr. Mendoza Java was hired, you never gave him  
25 anything in writing like a piece of paper that would say how

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S. Almonte - Cross

1 much he was going to be paid, correct?

2 A. He explained just now, and I recall, that it went according  
3 to the minimum wage. I don't remember how much it was right  
4 now. I don't know whether it was 60 -- \$60.

5 THE COURT: The question was: When Mr. Mendoza Java  
6 was hired, you never gave him anything in writing like a piece  
7 of paper that would say how much he was going to be paid,  
8 correct? That's the question.

9 THE WITNESS: I do not recall having given him a piece  
10 of paper, but we did reach an agreement.

11 Q. In 2010, you paid Mr. Mendoza Java a fixed salary, correct?

12 THE INTERPRETER: Mixed salary?

13 THE COURT: Fixed.

14 A. A fixed salary.

15 THE COURT: Do you understand what the lawyer means?

16 THE WITNESS: I didn't understand that correctly.

17 THE COURT: Why don't you explain to him what you mean  
18 by saying a fixed salary.

19 Q. You paid Mr. Mendoza the same amount of money, a daily  
20 rate; meaning, each day he received the same amount of money,  
21 correct?

22 A. We agreed on a salary, that was passed along to Mr. Juan  
23 Almonte, and he took care of the payment, the hourly payment  
24 that he was going to receive.

25 THE COURT: OK. For some reason Mr. Almonte doesn't

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1 seem to be listening to the questions or the interpreter is not  
2 making it clear in the translation.

3 The question was: "Did you pay Mr. Mendoza the same  
4 amount of money, a daily rate; meaning, each day he received  
5 the same amount of money, correct?

6 The answer is yes or no. Did you pay him the same  
7 amount of money every day, or not? That's the question.

8 THE WITNESS: Yes, but keep in mind that he -- one day  
9 he would work nights, and then he would be paid a little bit  
10 more.

11 THE COURT: Go ahead.

12 BY MS. ISAACSON:

13 Q. Mr. Mendoza Java was paid \$80 for the night shifts,  
14 correct?

15 A. That's correct.

16 Q. Until December 2015, you never gave Mr. Mendoza Java any  
17 kind of wage statement with his payment of wages, correct?

18 A. I didn't understand the question.

19 THE COURT: He may not understand what you mean by  
20 "wage statement."

21 Q. Up until December 2015, Mr. Mendoza Java was never given a  
22 pay stub or any other document along with his wages, correct?

23 A. I got mixed up again.

24 Q. From 2010 until December 2015, when Mr. Mendoza Java was  
25 given his wages, there was never anything that he was given in

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S. Almonte - Cross

1 addition to his wages, such as a pay stub or any other document  
2 explaining how much he was going to be paid or any other  
3 information on it, correct?

4 A. That is correct, but his payment was determined based on  
5 the sign, the sign that was on the door that got changed every  
6 year explaining wages.

7 THE COURT: Mr. Almonte, do you know what a pay stub  
8 is?

9 THE WITNESS: Yes.

10 THE COURT: Were there any pay stubs given to  
11 Mr. Mendoza Java before 2015?

12 THE WITNESS: No. He was paid in cash.

13 THE COURT: Were there any pay stubs given to him in  
14 2015?

15 THE WITNESS: Yes, sir.

16 THE COURT: And in 2016?

17 THE WITNESS: During the last two years, that's what I  
18 recall.

19 THE COURT: All right. Go ahead.

20 BY MS. ISAACSON:

21 Q. And throughout Mr. Mendoza Java's employment you never gave  
22 him any kind of wage notice or piece of paper indicating what  
23 his hourly and overtime rates were, correct?

24 A. That comes directly from the paper from the sign that the  
25 City sends which he would read every day when he would clean

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S. Almonte - Redirect

1 it.

2 MS. ISAACSON: No further questions.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. COSTIN:

6 Q. You indicated, sir, that there were some complaints about  
7 Mr. Mendoza. Is that correct? Complaints from managers?

8 A. Yes, the managers gave me complaints.

9 Q. Did you ever take any actions against Mr. Mendoza that  
10 impacted the hours that he worked?

11 A. Repeat the question?

12 Q. Did you ever suspend him as a result of that?

13 A. The shift manager, as I had just explained, was the one who  
14 was in charge of him, and he would make suggestions to Mr. Juan  
15 Almonte?

16 THE COURT: Mr. Almonte, did you ever suspend  
17 Mr. Mendoza for any reason? You. Did you?

18 THE WITNESS: No.

19 THE COURT: OK, that was the question. Just answer  
20 the question, please.

21 MR. COSTIN: Nothing further, your Honor.

22 THE COURT: All right. You may step down,  
23 Mr. Almonte.

24 (Witness excused)

25 THE COURT: We're going to take an afternoon recess.

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J. Almonte - Direct

1 Is Mr. Juan Almonte the next witness?

2 MR. COSTIN: The last and final witness for the day,  
3 your Honor.

4 THE COURT: Then after that, it's Ms. Carasquillo who  
5 is the only remaining witness?

6 MR. COSTIN: Unfortunately, yes.

7 THE COURT: We will talk about that at the end of  
8 this.

9 Ms. Isaacson, do you anticipate a rebuttal case of any  
10 kind?

11 MS. ISAACSON: Not today.

12 THE COURT: Not today, but when?

13 MS. ISAACSON: If we come back for Ms. Carasquillo,  
14 then potentially.

15 THE COURT: We'll talk about that. We'll take our  
16 afternoon recess for ten minutes. By my watch, it's 3:33.  
17 We'll make it 12 minutes. 3:45 we're starting, OK?

18 (Recess)

19 THE COURT: Call your next witness, please.

20 MR. COSTIN: Call to the stand Mr. Juan Almonte.

21 JUAN ALBERTO ALMONTE,

22 called as a witness by the Defendant,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 MR. COSTIN: May I inquire, your Honor?

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J. Almonte - Direct

1 THE COURT: You may.

2 BY MR. COSTIN:

3 Q. Mr. Almonte, are you the former owner of El Aguila Bar and  
4 Lounge located in the Bronx?

5 A. Yes.

6 Q. When were you the owner of that business?

7 A. From the time it was opened in 2008 until it was closed  
8 down in 2016.

9 Q. Were there any other owners of that business, El Aguila,  
10 during that time period?

11 A. Absolutely none.

12 Q. Did you have -- can you tell the Court a little bit about  
13 the shifts that you had for your employees who worked at  
14 El Aguila?

15 A. There was one shift that was from 8:00 in the morning until  
16 4:00 in the afternoon. And then there was a small waiting  
17 shift from 4:00 to 11:00, but generally the shift was then from  
18 8:00 p.m. to 4:00 in the morning.

19 Q. How many employees did you have working in El Aguila in  
20 2010?

21 A. I don't remember exactly, but it was around 12 or more.

22 Q. Did you have the minimum wage sign posted in your business?

23 A. Of course, I did. In English and Spanish.

24 Q. Where?

25 A. It was close to the cash register and on the wall at the



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J. Almonte - Direct

1 bar.

2 Q. How many posters did you have?

3 A. I had several posters because several posters come in from  
4 the labor department.

5 Q. Were these posters present in your business between 2010  
6 and 2016?

7 A. All the time, even before.

8 THE COURT: Even before what?

9 THE WITNESS: 2010.

10 Q. Who hired Mr. Mendoza?

11 A. He was interviewed by Mr. Santiago who was the general  
12 manager. He told me that he needed an employee, and so I  
13 approved it. I approved his employment.

14 THE COURT: You're talking about your brother now?

15 THE WITNESS: My brother, yes, sir.

16 Q. Did anyone other than you have the authority to hire an  
17 employee?

18 A. No. It was only I who would approve it.

19 Q. What did you hire Mr. Mendoza to do?

20 A. Cleaning and deliveries, and to provide some help to the  
21 female cook, to bring her whatever tools she might need.

22 Q. Did you expect him to sign in and out to keep track of his  
23 hours?

24 A. Not at the beginning. We did not have such -- we did not  
25 keep such a record. We didn't have those requirements when he

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1 just started working there.

2 Q. Did you ever have those requirements?

3 A. Yes, sir, and all the employees used to sign that paper,  
4 that record that was there, but he never wanted to sign it.

5 Q. Why not?

6 A. As far as I understand, it was because he used to say that  
7 he was going to be the owner of the place; that he was an  
8 important person there, and that he -- it was not necessary for  
9 him to sign in, and that he was not going to do it.

10 Q. Other than Mr. Mendoza, who else did not sign in and out?

11 A. After that record was established, I don't remember that  
12 anybody else would not sign. It was very hard not to. It was  
13 only him.

14 Q. Well, now you're the owner of the business. Did you tell  
15 him, hey, you need to sign; it's your responsibility?

16 A. No. Because I was almost never there, and I was not the  
17 one in charge of whether he signed in or out or not at the  
18 time. I was never there at the time.

19 Q. And what time period are you talking about?

20 A. During the day. During Mr. Florencio's work schedule.

21 Q. Now, the book that you mentioned, where is that book?

22 A. I have many records on paper of the latter times there, but  
23 then a lot of them were stolen -- people came in and they stole  
24 them or damaged them or they got wet.

25 Q. When did this occur?

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J. Almonte - Direct

1 A. That happened after I was shut down, several months after,  
2 a few months after.

3 Q. So where were the records kept? Where did you house the  
4 records?

5 A. In the office.

6 Q. The office at El Aguila?

7 A. Of course.

8 Q. Did you contact any -- did you contact the police to  
9 indicate that your records had been damaged or destroyed in any  
10 way?

11 A. They came in to do a general investigation of what had been  
12 lost or damaged. They were not exactly told about the loss of  
13 records or damaged records.

14 Q. And what other damage was done to El Aguila after you  
15 closed?

16 A. During that robbery, a lot of bottles were broken and they  
17 damaged a lot of the things that were there.

18 Q. What type of things are we talking about? Be more  
19 specific, if you would.

20 A. For instance, I had checks, checkbooks there near those  
21 records, and they were either torn or taken or damaged, but the  
22 checks were no longer usable because I had already closed down  
23 that account. So the business, the business had been closed  
24 down, it had been shut down already.

25 Q. And the records that were destroyed or missing, what time

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1 periods are we talking about?

2 A. We are referring to after 2012, it must be that those --  
3 the records were there.

4 Q. Did you have records between 2010 and -- for 2010 and 2011?

5 A. Keep in mind that back then, you used to be told that you  
6 could dispose of any paperwork or purchase receipts or anything  
7 of the sort after four years, and, you know, after that it was  
8 destroyed.

9 THE COURT: OK. A little instruction to the witness.

10 Mr. Almonte, the question was did you have records  
11 between 2010 and -- for 2010 and 2011." That's the question.

12 The answer to that question is yes, I did, or, no, I  
13 didn't. That's the answer, one of those two. You just gave a  
14 four line answer that didn't answer the question. OK?

15 So listen carefully to the question. It will be  
16 interpreted for you, and then answer precisely what's being  
17 asked and nothing more.

18 THE WITNESS: Yes, your Honor.

19 Q. Mr. Almonte what happened to your records that you had for  
20 the year 2010?

21 A. They were lost. They had disappeared.

22 Q. When?

23 A. It was likely --

24 THE INTERPRETER: Interpreter correction. It is  
25 likely that when those purchase receipts that were no longer

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1 necessary were thrown out, that they might have gone among  
2 those.

3 Q. What about your records from 2011, do you know where they  
4 are?

5 A. No, not those either.

6 Q. And do you know the last time you saw those records?

7 A. I wouldn't have had to review them for any reason. I do  
8 not recall when I might have seen them last.

9 Q. Do you recall Mr. Mendoza's schedule beginning August 2010?

10 A. I have some idea of what it was even though I was not the  
11 person in charge of staying on top of his schedule, but I have  
12 some idea.

13 Q. What -- I'm going to backtrack. Before we get into his  
14 schedule, I'm going to ask you -- I'm going to go into payments  
15 of Mr. Mendoza. We'll talk about that first, and then we'll  
16 talk about his schedule. Tell me who is responsible for paying  
17 employees at El Aguila?

18 A. Myself as the owner.

19 Q. Can you please tell the Court the procedure that you had  
20 for making payments to your employees, let's say, in the year  
21 2010.

22 A. OK. Well, I was given the hours worked or the days worked  
23 by the employees. These were given to me by the managers, but,  
24 see, it would be passed on from one to the other. For  
25 instance, Pedro would give that to Santiago as the general

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1 manager, then we would sit down have a talk, and that's how it  
2 was determined for what hours each person would be paid.

3 Q. If someone worked fewer than their regularly scheduled  
4 hours, would they be paid the same amounts? Would they be paid  
5 for the full day or would the hours be reduced?

6 A. To many people, regardless of whether they worked their  
7 full schedule, I would pay them the full day even if, let's  
8 say, they had worked for a day a half day or a few hours, I  
9 would still pay them their regular schedule.

10 Q. Why would you do that?

11 A. I would do that because I liked to pay the employees at  
12 least the minimum wage so that -- or they'd have their full  
13 salary, I used to like to keep them happy.

14 Q. What would have happened if you didn't pay, you know, if  
15 you docked somebody for hours that they -- for time that they  
16 missed?

17 THE INTERPRETER: For time they missed?

18 Q. For time they missed at work.

19 A. If they were docked, it was because perhaps they hadn't  
20 worked an hour and if they complained, then I had the  
21 indication that they had not worked.

22 Q. Did you have long-term employees at your business?

23 A. I don't quite understand the question.

24 MR. COSTIN: I'll move on.

25 THE COURT: Long-term employees. You all have to ask

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1 questions in plain English. You are asking, you know, my  
2 example is: Why do prosecutors also ask FBI agents why they  
3 exit vehicles instead of get out of cars. You're asking a lot  
4 of "exit the vehicle questions" instead of "get out of the car  
5 question." Especially in this case where we have interpreters,  
6 you all are asking fixed wages and long-term employees, you are  
7 talking like the labor lawyers you are, but we have witnesses  
8 who are lay people who don't speak the same language, so try  
9 and speak in plain English.

10 MR. COSTIN: Thank you, your Honor.

11 BY MR. COSTIN:

12 Q. Did the business benefit by paying their employees for a  
13 full day even if they didn't work a full day?

14 A. My understanding was that yes because they had to realize  
15 that I was not deceiving them.

16 Q. Was that important to you?

17 A. Of course, it was.

18 Q. Why?

19 A. For the business to be successful, it was necessary for me  
20 to keep the employees happy. They needed to be happy, so I  
21 would try to keep them happy.

22 Q. Do you recall if anybody, if any of your employees called  
23 you deceitful?

24 A. Never.

25 Q. Were your employees happy?

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1 A. I believe so. Even Florencio himself just said that he was  
2 happy at his job.

3 Q. Do you know why he said he was happy at his job?

4 A. He had nothing to complain about. We used to pay him his  
5 minimum wage or even more, so that's it.

6 Q. Let's get back to Mr. Mendoza's schedule. Back in 2010, do  
7 you recall what his schedule was?

8 A. Yes. In 2010, as far as I can remember, he used to work  
9 five days from 8:00 in the morning to 4:00 in the afternoon.

10 Q. Did he have regular -- did he have days off? Sorry --

11 A. Yes. Well, he only worked five days, so he was off two  
12 days.

13 Q. What were the days off?

14 MS. ISAACSON: Objection. Mr. --

15 THE COURT: Just one second. I don't know that I need  
16 a speaking objection.

17 The objection is overruled. You may answer.

18 The question is: What were the days off? I don't see  
19 how that question could be objectionable.

20 What were the days off for Mr. Mendoza to your  
21 knowledge in 2010?

22 THE WITNESS: Sundays and Mondays.

23 THE COURT: By the way, there were a lot of questions  
24 before that you could have objected to that I would have  
25 sustained, but you didn't object to any of those. Try to



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1 listen carefully to the question because Mr. Costin just asked  
2 a number of questions that I thought were objectionable but you  
3 didn't object.

4 Next question, Mr. Costin.

5 BY MR. COSTIN:

6 Q. What was Mr. Mendoza's -- how much was Mr. Mendoza paid in  
7 2010?

8 THE COURT: We're talking about 2010?

9 MR. COSTIN: Yes.

10 THE COURT: Be precise.

11 MR. COSTIN: Yes, in 2010.

12 A. In 2010 he was around -- he was close to \$300. I do not  
13 remember exactly how much he was being paid.

14 Q. Were you paying the minimum wage, a little bit more than  
15 the minimum wage, or something else?

16 MS. ISAACSON: Objection. Leading.

17 THE COURT: Overruled. You may answer.

18 A. Yes, they were all paid the minimum wage. That's why I had  
19 the current posters there. In fact, they were even paid a  
20 little bit more. They were never paid right at the base.

21 Q. And why did you pay them a little bit more than the minimum  
22 wage? What did you mean by that?

23 A. It's for the same reason that I would make sure that it was  
24 not the minimum, I would always add a little bit more. They  
25 could always end up with a little bit more.

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1 Q. Did there come a time that -- did his schedule change?

2 A. Yes, it changed.

3 Q. When did it change, sir?

4 A. As of July 2012 the schedules changed.

5 Q. What was Mr. Mendoza's schedule in July of 2012?

6 A. Mendoza started working four days during the daytime and  
7 one at night.

8 Q. What day did -- when was his night shift?

9 A. Sundays at night.

10 Q. What days did he have off from work?

11 A. Well, then his days off also changed. Because now that he  
12 was working Sunday at night, I gave him off Mondays and  
13 Tuesdays.

14 Q. How do you remember July of 2012 is the time that his  
15 schedule changed?

16 A. I had to remodel the business and then we also established  
17 a schedule change.

18 Q. I'm talking about July 2012.

19 A. In July of 2012, an employee had left, and I needed help at  
20 night with the beer, so I then transferred Mexico to the night  
21 shift because it was busier and the daytime was not as busy.

22 Q. Mexico is Mr. Mendoza, correct?

23 A. Of course, yes.

24 Q. What did you pay Mr. Mendoza in July of 2012?

25 A. In July 2012, he was being paid around \$325 to 30. I

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1 believe that's what it was. I'm not quite sure.

2 Q. Is that -- did you start to pay him more than that during  
3 that time period as well? Just for clarification, the time  
4 period is July 2012 through December 2015.

5 A. I don't remember the exact amount, but it was around that  
6 time, yes, that his salary was raised.

7 Q. Now, you said salary. What do you mean by salary?

8 A. By salary, I'm referring to the money that I was paying him  
9 for his hours of work.

10 Q. Did Mr. Mendoza ever work overtime?

11 A. He had his hours established, eight hours starting at 8:00.  
12 Those were the hours that he had established, and I never  
13 required him to work overtime hours.

14 Q. If he worked more than 40 hours in a week, would you know  
15 about it?

16 A. Of course I would have, because the hours he worked were  
17 reported to me.

18 Q. What would you have done if he had worked more than 40  
19 hours in the course of one week?

20 A. I would have paid him overtime for those hours he had  
21 worked.

22 Q. Why?

23 A. Because those are overtime hours, and you're supposed to  
24 pay overtime for those hours.

25 Q. What is overtime? Do you know how to calculate overtime?

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1 A. I have some idea. When you work overtime hours, you're  
2 paid the hour that you worked plus half of your hourly rate --  
3 I'm sorry. As a matter of fact, it's even explained in the  
4 poster, on the poster.

5 Q. Do you recall paying -- did Mr. Mendoza's schedule change  
6 so that he no longer worked nights?

7 A. Yes, his schedule was changed again beginning in 2015.

8 Q. What month in 2015?

9 A. I don't know the exact month, but it must have been toward  
10 the end of 2014 -- of 2015, I believe.

11 Q. And why do you remember that?

12 A. Well, what happened was, I didn't want to do business with  
13 the restaurant during the day, but things had really gone  
14 downhill. That is, there were employees, and there was no  
15 money being produced. And that's why I changed the schedule  
16 and had them start work from 10:00 till 6:00.

17 Q. What was Mr. Mendoza's schedule to when you changed it in  
18 December 2015?

19 A. He, along with all of the other daytime employees, were  
20 working from 10:00 until 6:00 p.m.

21 Q. What were his days off?

22 A. At that time, he was off once again on Sundays and Mondays.

23 Q. How much was he paid?

24 A. Mexico was being paid -- I don't have the exact number, I  
25 don't recall, but I believe \$295, \$295, from what I could

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1 recall. I don't recall exactly. I don't have that in mind  
2 right now.

3 Q. You made sure, however, that you paid him to comply with  
4 the minimum wage law. Is that right?

5 A. I certainly did. I was paying him 95 in cash and the rest  
6 by check. I recall now that it was \$260 plus \$95.

7 Q. I just want to go back to one thing just to help me  
8 understand or help understand how you determined --

9 THE COURT: I'm not interested in your understanding.  
10 I'm just interested in you asking questions.

11 MR. COSTIN: Yes, your Honor. Understood.

12 Q. You indicated that in 2010, Mr. Mendoza was paid 300 a  
13 week. Is that correct?

14 A. That's correct.

15 Q. If you paid him the minimum --

16 THE COURT: Try not to lead. Just ask the questions.

17 Q. Yes. Do you recall what the -- if I were to tell you that  
18 the minimum wage was \$7.25, would you be able to explain to the  
19 Court how you were able to determine that you were going to pay  
20 him 300 a week?

21 MS. ISAACSON: Objection.

22 THE COURT: It's a pretty inartful question, but at  
23 the end of the day, I think it's not -- why don't you rephrase  
24 it. I don't really like that question. I'd be surprised if he  
25 understood exactly what you're asking the way you asked it.

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1 MR. COSTIN: Sure.

2 THE COURT: Do you know what the minimum wage was at a  
3 point in time. Why don't you start with that. Do it in  
4 pieces.

5 A. I was always aware and always up to date because of the  
6 poster that was sent to me. The accountant sent it to me.  
7 ADP, which was the company that issued checks, sent it to me.  
8 Sometimes the insurance company would send it to me.

9 MR. COSTIN: Your Honor, I have a calculator. May I  
10 give it to my client to do some basic math?

11 THE COURT: No. We are not in math class here.

12 MR. COSTIN: I understand.

13 THE COURT: Can I ask you, Mr. Almonte, did you get  
14 posters with the information related to the minimum wage every  
15 year?

16 THE WITNESS: Every year, and each time it was  
17 changed, then there was a raise.

18 THE COURT: All right. Go ahead.

19 MR. COSTIN: I'll come back to that one.

20 BY MR. COSTIN:

21 Q. Did there come a time that you used ADP or -- did you use  
22 ADP for your payroll?

23 MS. ISAACSON: Objection.

24 THE COURT: I mean, I'll sustain it because there is a  
25 way to get where you are going, but it's not the way you're

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1 asking.

2 Q. Did you use any companies to help you with payroll?

3 A. ADP.

4 THE COURT: "What was the name of the company? ADP.

5 We'll be in the same place. It's 20 after 4:00. It  
6 depends how late you want to stay. I'm sure the interpreters,  
7 the court reporter and my deputy don't want to stay, but we are  
8 going to finish this witness tonight. So we are going to try  
9 and be as economical as possible. So pick when you want to  
10 object because you think it really substantively matters  
11 because the end of the day, the fact that it was ADP is not  
12 going to rock anybody's world, with all respect. OK?

13 Next.

14 BY MR. COSTIN:

15 Q. When did you start using ADP?

16 A. I believe in 2014.

17 Q. Why?

18 A. I was trying to keep myself up to date, and I was trying to  
19 do what was being demanded of me, and I was supposed -- I had  
20 been paying in cash, and I wanted to get up to date because I  
21 didn't think that was right, and I wanted to fix things.

22 Q. Did you ever pay Mr. Mendoza using ADP?

23 A. He gave me his PIN number immediately.

24 THE COURT: So the answer is yes?

25 A. Or could you please repeat the question for me then?

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1 THE COURT: I wish you would listen to it the first  
2 time.

3 The question was: Did you ever pay him using ADP?  
4 The answer is yes or no. Not he gave me his PIN number.

5 THE WITNESS: Yes. Yes. Yes.

6 Q. When did this happen, what year? Do you recall?

7 A. In 2015 when he gave me that document. Excuse me, because  
8 I couldn't report it before because he hadn't given me his  
9 records.

10 MS. ISAACSON: Move to strike.

11 THE COURT: It's stricken. Next.

12 Q. Do you recall Mr. Mendoza taking any vacation time?

13 THE COURT: Do you mean at any time during his  
14 employment?

15 MR. COSTIN: Actually, yes, between 2010 and 2016,  
16 your Honor.

17 THE COURT: Thank you.

18 A. At least one week every year.

19 Q. Do you recall approximately when he would take that one  
20 week?

21 A. I don't have that in memory right now because he would  
22 either ask me to take vacation or I would automatically tell  
23 him to take vacation, but I don't remember when.

24 Q. Between 2010 and 2016, do you recall if Mr. Mendoza took  
25 any time off because he was ill or sick?



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1 A. He did not come in to work on several different occasions  
2 because of illness.

3 Q. Do you know approximately how many days he missed because  
4 he was ill?

5 THE COURT: Do you know? Yes or no. Do you know how  
6 many? Yes or no.

7 THE WITNESS: Yes.

8 THE COURT: How many, approximately?

9 THE WITNESS: Approximately, well, like for three  
10 weeks when he had the problem from being shot. After that, he  
11 had appointments every two -- well, he had appointments two  
12 days a week for many weeks, many times.

13 THE COURT: And were those appointments such that he  
14 was not at work at all on those days?

15 THE WITNESS: Sometimes he came back in. Sometimes he  
16 did not come back in.

17 THE COURT: Was he paid on those days or not paid?

18 THE WITNESS: He was paid for the full day. He was  
19 always paid for the full week.

20 THE COURT: Even when he took sick leave?

21 THE WITNESS: For sure. It was sent to his house.  
22 Many times my brother sent the check to his house.

23 THE COURT: And was he paid when he was on vacation?

24 THE WITNESS: They were paid also.

25 THE COURT: "They" meaning who is they? I'm asking

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1 about this.

2 THE INTERPRETER: The interpreter's correction. He  
3 was paid.

4 BY MR. COSTIN:

5 Q. Was your business closed during holidays?

6 A. During the day it would be closed, but we almost never took  
7 a vacation. We never went to resort -- we never went --

8 THE COURT: Let's try this one more time. This might  
9 be the last time I do this, OK?

10 The last question that Mr. Costin asked you, please  
11 interpret, was: Was your business closed during the holidays.  
12 That's the question.

13 The answer is yes or no. Was it closed during the  
14 holidays? Yes or no.

15 THE WITNESS: Yes, but not all the time.

16 THE COURT: No. No. No.

17 THE WITNESS: Yes.

18 THE COURT: Yes, it was.

19 Then you asked the next question. When was it closed?  
20 What holidays? Was it closed the whole day? Let's ask normal  
21 questions and get normal answers. I don't know why this is so  
22 hard.

23 MR. COSTIN: Yes.

24 BY MR. COSTIN:

25 Q. On what holidays was your business closed?

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1 A. July 4, December 25, January 1. Those were the main days  
2 that were closed.

3 THE COURT: Were you closed completely or just for  
4 part of the day?

5 THE WITNESS: During the day.

6 THE COURT: So you were open on Christmas night?

7 THE WITNESS: Correct.

8 THE COURT: And the night of 4th of July.

9 THE INTERPRETER: The interpreter should correct  
10 something. By Christmas night, you mean not Christmas Eve?

11 THE COURT: I mean Christmas night.

12 THE WITNESS: We were closed during the day.

13 THE COURT: What time would you open on a holiday like  
14 Christmas?

15 THE WITNESS: After 6:00 p.m.

16 THE COURT: How late would you stay open?

17 THE WITNESS: Until 4:00.

18 THE COURT: Did Mr. -- I'm sorry?

19 THE WITNESS: Sometimes I would get a permit for the  
20 25th and the 31st, and sometimes I would get a permit to stay  
21 open until 8:00 a.m.

22 THE COURT: Did Mr. Mendoza work on these holidays?

23 THE WITNESS: No, because he worked during the day.  
24 No.

25 THE COURT: So your testimony is he never worked on

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1 any holidays between 2010 and 2016?

2 THE WITNESS: No.

3 THE COURT: Go ahead.

4 BY MR. COSTIN:

5 Q. If the holiday fell on a Sunday, would he work it, and he  
6 was scheduled to work?

7 A. I was closed if there was a holiday, then most everything  
8 would be closed.

9 THE COURT: I don't understand that answer. I thought  
10 he just said 4th of July, Christmas and New Year's were the  
11 only holidays he was closed, and the testimony was that  
12 Mr. Mendoza worked all the time on Sundays between 2010 and  
13 2016.

14 You're muddying and making the record more and more  
15 confusing, Mr. Costin. You really are. This is the kind of  
16 case where precision matters, OK? That's why I'm trying to  
17 take over the questioning because you all are muddying this  
18 record, and I need it to be precise for purposes of making  
19 findings of fact. So please ask questions that are laser-beam  
20 focused.

21 MR. COSTIN: Yes, sir.

22 THE COURT: It is 4:30 and my patience is beginning to  
23 be tried here. Very concrete, discrete questions.

24 MR. COSTIN: Yes, your Honor. Actually, your Honor,  
25 I'm going to move on. I'm going to ask another question.

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1 BY MR. COSTIN:

2 Q. Were you informed by your managers that Mr. Mendoza was not  
3 present at work during his scheduled hours?

4 A. Yes. I was informed about whatever happened.

5 Q. Did you take any disciplinary actions towards Mr. Mendoza  
6 regarding the allegations that he was missing from work?

7 A. What I did was I advised him many times that if he didn't  
8 stop doing those things, I would have to fire him.

9 Q. Why didn't you fire him?

10 A. Out of sympathy because I believe it is hard to be out of a  
11 job when you have no papers and -- those were the reasons why.

12 Q. Did you believe that -- were you informed when he was  
13 suspended from work by Mr. Pichardo?

14 A. Yes.

15 Q. Did you ever suspend Mr. Mendoza?

16 A. No.

17 Q. Did you ever -- when did you learn -- did you ever learn  
18 that Mr. Mendoza had a relationship with Margarita Carasquillo?

19 MS. ISAACSON: Objection.

20 THE COURT: Overruled. The question requires a yes or  
21 no answer.

22 Did you ever learn it? Yes or no.

23 Did you ever learn that he had the relationship? Yes  
24 or no.

25 THE WITNESS: Yes. Yes.

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1 Q. When?

2 A. After the business was closed, after the business had  
3 stopped operating, I believe.

4 MR. COSTIN: Nothing further, your Honor.

5 THE INTERPRETER: Interpreter's correction and the  
6 relationship was then over.

7 MR. COSTIN: Nothing further, your Honor.

8 THE COURT: Cross-examination, please.

9 CROSS-EXAMINATION

10 BY MS. ISAACSON:

11 Q. Good afternoon, Mr. Almonte.

12 A. Govern.

13 Q. You're the owner El Aguila Bar Restaurant Corp., the entity  
14 that operated El Aguila? Yes or no.

15 A. Correction. I was the owner.

16 Q. You were the owner of El Aguila Bar Restaurant Corp., the  
17 entity that operated El Aguila? Yes or no.

18 A. Yes.

19 Q. You were in charge of supervising employees at El Aguila?  
20 Yes or no.

21 A. No.

22 Q. You paid employees at El Aguila? Yes or no.

23 A. Yes.

24 Q. You determined employees' schedules at El Aguila? Yes or  
25 no.

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1 A. Yes.

2 Q. If an employee was not performing work properly, you had  
3 the power to fire them? Yes or no.

4 A. Of course I did.

5 Q. You paid Mr. Mendoza Java solely in cash until  
6 December 2015? Yes or no.

7 A. Yes.

8 Q. From December 2015 until July 2016, you paid Mr. Mendoza  
9 Java in check and cash? Yes or no.

10 A. Yes.

11 Q. And in 2010, you were paying Mr. Mendoza Java \$300 per  
12 week? Yes or no.

13 A. Yes.

14 Q. And in July 2012, you were paying Mr. Mendoza Java \$325 or  
15 \$330 per week? Yes or no.

16 A. I don't recall exactly, but yes, that was the amount more  
17 or less, yes.

18 Q. And starting in December 2015, you paid Mr. Mendoza Java  
19 \$260 per week in check and \$95 per week in cash? Yes or no.

20 A. Please repeat that question.

21 Q. And starting in December 2015, you paid Mr. Mendoza Java  
22 \$260 per week in check and \$95 per week in cash? Yes or no.

23 A. Yes. The only thing is I think that it was actually \$262.  
24 It's just a small difference.

25 Q. OK. And you were rarely at the El Aguila restaurant? Yes

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1 or no.

2 A. No, not rarely. Not rarely.

3 THE COURT: When you use a word like "rarely," it  
4 invites a lot of questions. You could drive a truck through  
5 rarely, so I would be a little bit more precise than rarely.

6 Q. You weren't at the restaurant every day? Yes or no.

7 A. Almost every day.

8 Q. And the hours that Mr. -- strike.

9 And you didn't have personal knowledge of the hours  
10 that Mr. Mendoza Java worked, right? Yes or no.

11 A. Because of the schedule I gave him, I knew the schedule  
12 that he was supposed to work, but I wasn't present to verify  
13 it.

14 MS. ISAACSON: Move to strike as non-responsive.

15 THE COURT: That is not going to be done. That  
16 testimony will stand.

17 Q. And you knew Mr. Mendoza Java's hours were based on what  
18 the managers would tell you they were? Yes or no.

19 A. Correct.

20 Q. And Mr. Mendoza Java worked in 2010 from 8:00 a.m. to  
21 4:00 p.m., correct?

22 A. Yes.

23 Q. And you never observed when Mr. Mendoza Java would come  
24 into work in 2010, correct?

25 THE COURT: That's why he says he wasn't present to



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1 verify it, and that's why I allowed that testimony. If you  
2 want to go through it again, we can. There is no jury here. I  
3 have two law clerks sitting there. Maybe you're trying to  
4 persuade them, but I'm the only one, and I already heard what  
5 he said.

6 If you want to do it this way, you can, but it is  
7 quarter of 5:00. It's up to you. I have all night. I'm not  
8 going anywhere.

9 Q. And you don't have any documentation reflecting when  
10 Mr. Mendoza Java entered and exit each day for work, correct?

11 THE COURT: No. No pero anything.

12 Yes or no, you have the document?

13 THE WITNESS: No, but in 2015 -- well, up until 2015,  
14 yes.

15 THE COURT: Up until 2015, you didn't have any  
16 documents, correct?

17 THE WITNESS: No.

18 THE COURT: And then you had documents beginning in  
19 2015, correct?

20 THE WITNESS: Yes.

21 THE COURT: But as you testified on direct, they're  
22 either lost or destroyed, and in any event, no longer  
23 available, correct?

24 THE WITNESS: Of all of the employees in common  
25 whether or not Mexico was there, but it's of all the employees.

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1 THE COURT: Right, but the only employee I care about  
2 is Mr. Mendoza Java, and you don't have any documents that  
3 reflect any hours he worked. At this moment in time as we sit  
4 here today in this courtroom, you don't have any documents. If  
5 you did, you would have given them to Mr. Costin, I'm sure.  
6 Isn't that correct?

7 THE WITNESS: That's right.

8 BY MS. ISAACSON:

9 Q. You never gave Mr. Mendoza Java anything in writing when he  
10 was hired about how much he was going to be paid, correct?

11 A. Correct.

12 Q. In fact, throughout his employment, you never gave him any  
13 kind of notice indicating what his hourly and overtime rates  
14 were, correct?

15 A. That's correct, but he did not work overtime, and we would  
16 discuss it verbally. Correct, no.

17 Q. And you never gave Mr. Mendoza Java any paystub or document  
18 with his payment of wages from 2008 until December 2015,  
19 correct?

20 A. Correct.

21 Q. From 2010 to 2014, Mr. Pedro Pichardo told you under 20  
22 times that he sent Mr. Mendoza Java home for being too drunk,  
23 correct?

24 A. Yes.

25 Q. From 2010 to 2014, Mr. Pichardo also told you that

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1 Mr. Mendoza Java would be missing three times a week for an  
2 hour at a time, correct?

3 A. That's also correct.

4 Q. From 2010 to 2014, did you ever give Mr. Mendoza Java an  
5 award for his professionalism?

6 A. In December, during an employee party he was given an  
7 acknowledgment because he was greatly appreciated and he would  
8 do his work.

9 Q. December of what year?

10 THE COURT: 2014 is what he testified to.

11 MS. ISAACSON: No further questions.

12 THE COURT: Mr. Costin, you're up if you have anything  
13 further.

14 MR. COSTIN: Yes, I have one thing. May I approach  
15 the witness? I have a document.

16 THE COURT: Give it to Mr. Tam.

17 MR. COSTIN: You already have a copy of it.

18 THE COURT: Sure.

19 MR. COSTIN: Your Honor, may I approach the witness?

20 THE COURT: Sure. Do you have a copy for me?

21 MR. COSTIN: Yes, I do.

22 THE COURT: I don't quite understand why you're  
23 offering a document on redirect, something that should have  
24 been offered on direct or something that the cross-examination  
25 raised that would make it appropriate that would offer it on

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1 redirect. Or you're not offering it, so you're just showing it  
2 to refresh him which you haven't given any basis to do yet.

3 What's happening with this document?

4 MR. COSTIN: Your Honor, this could have been put in  
5 on direct. It could have been put in -- I'm putting it in on  
6 cross --

7 THE COURT: It's not on cross. You are on redirect.  
8 Ask a question. Let's see what happens.

9 BY MR. COSTIN:

10 Q. Mr. Almonte, I'd like for you to take a look at document  
11 marked Defendant's B. Do you recognize the document, sir?

12 A. Yes, sir.

13 Q. What is that, sir?

14 A. This is a document that shows Mexico was reporting now or  
15 what is called a W2 in order to prepare his income taxes.

16 Q. Where did that document come from, please?

17 A. From an ADP report, ADP which was the company that did the  
18 payroll or that prepared the checks.

19 Q. How did this document come into your possession? How did  
20 you get this?

21 A. They would send a delivery man. I can't quite recall if it  
22 was UPS or Fed Ex, but every week they would send it with the  
23 checks, and then this document was included in it.

24 Q. Is this a fair and accurate of your original?

25 A. This is the original because I never turned it into Mexico

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1 because he never came back since, since the business is shut  
2 down, so --

3 MR. COSTIN: The document you're holding in your hand  
4 is that a piece of paper that you got from ADP or is it a copy  
5 of the document?

6 THE WITNESS: I haven't made any copies of this. A  
7 copy is shown here. Maybe he made copies of it, but I haven't  
8 made copies. Him. Him, the lawyer.

9 MR. COSTIN: Your Honor, I offer this in evidence as  
10 Defendant's Exhibit's B.

11 THE COURT: Any objection?

12 MS. ISAACSON: Yes.

13 THE COURT: What's the objection?

14 MS. ISAACSON: It wasn't within the scope of cross.

15 THE COURT: I'll overrule it for purposes of having  
16 the record completed. I'm not sure how much it really adds to  
17 anything, but I'll accept it into evidence.

18 MR. COSTIN: Thank you, your Honor.

19 (Defendant's Exhibit B received in evidence)

20 MR. COSTIN: Nothing further at this time.

21 THE COURT: Any recross?

22 MS. ISAACSON: No, your Honor.

23 THE COURT: Mr. Almonte, you may step down.

24 (Witness excused)

25 THE COURT: Mr. Costin, any other witnesses?

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1 MR. COSTIN: No, your Honor.

2 Well, at this time I don't have any other witnesses  
3 present, but I would like to call Margarita Carasquillo.

4 THE COURT: Are you going to be able to call her  
5 tomorrow?

6 MR. COSTIN: No, your Honor. That's definitely not  
7 going to happen.

8 THE COURT: That's because of her medical condition?

9 MR. COSTIN: Because of her medical condition. I  
10 scanned some medical documents that I received from the  
11 hospital, but she is not going to be able to come in.

12 THE COURT: Make a proffer as to what her testimony  
13 would entail.

14 MR. COSTIN: Sure. She would testify that --  
15 Ms. Carasquillo would testify that if she were -- she would  
16 testify that the defendant spent about --

17 THE COURT: I know you do a lot of plaintiff's work,  
18 but remember who you are representing in this case.

19 MR. COSTIN: Yes, your Honor.

20 That Mr. Mendoza would come to her apartment at least  
21 three times a week and spend up to an hour and a half with her  
22 inside of the apartment. He would stay there and he would come  
23 there when he knew that Mr. Santiago Almonte was not in the  
24 restaurant because he knew that he should have been at work.

25 THE COURT: What period of time are we talking about?

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1 MR. COSTIN: The entire time relevant to this case,  
2 your Honor.

3 THE COURT: 2010 to 2016?

4 MR. COSTIN: Correct.

5 THE COURT: She's going to testify that Mr. Mendoza  
6 came to her apartment, what did you say, three times a week for  
7 six years?

8 MR. COSTIN: Yes, they had a relationship, your Honor.

9 THE COURT: For six years.

10 MR. COSTIN: Yes. Yes, and part of it -- yes, that's  
11 what she's going to testify to, and the relationship ended  
12 around the time that the restaurant closed, and also there were  
13 some issues with his wife.

14 THE COURT: Well, I don't know that the issues with  
15 the wife have anything to do with the case, and I probably  
16 would disallow anything related to that.

17 MR. COSTIN: That's fine, your Honor.

18 THE COURT: The only issue that's relevant here is he  
19 claimed he worked up to 12 hours a day on many days, and you're  
20 saying he not only didn't work 12 hours, he didn't even work  
21 the eight hours because he was with her during one and a half  
22 out of those eight hours. Is that effectively what you're  
23 going to be arguing as a result of what you're proffering her  
24 testimony to be?

25 MR. COSTIN: Plus, your Honor, after work, he would go

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1 to her apartment as well.

2 THE COURT: After work is irrelevant to me. I'm  
3 trying to figure out -- my job is to make findings of fact.  
4 The plaintiffs are arguing that he worked 12 hours a day, 8:00  
5 to 8:00 on a lot of days. You're arguing he worked 8:00 to  
6 4:00, and my understanding is that this testimony would relate  
7 to the fact that he didn't even work 8:00 to 4:00. Isn't that  
8 what you're arguing through her testimony, or something else?

9 MR. COSTIN: That is what I'm arguing, your Honor.

10 THE COURT: OK. So what I propose is that you  
11 submit -- and I assume that you could prepare an affidavit as  
12 her direct testimony.

13 MR. COSTIN: Yes.

14 THE COURT: And then, Ms. Isaacson, you could  
15 cross-examine her and you could conduct any redirect. And that  
16 could all happen probably within an hour. Is that not right?  
17 This is a pretty discrete witness and line of questions.

18 Ms. Isaacson, how much time do you think? Given how  
19 much time you took with the parties, I can't imagine you taking  
20 more time with a non-party, especially when it's really one  
21 issue, and it is what it is, so to speak.

22 MS. ISAACSON: Yes, your Honor. We don't anticipate  
23 taking too long with Ms. Carasquillo on cross. Mr. Clark did  
24 take her deposition, and it was fairly short because it was a  
25 limited issue. We would object to her submitting an affidavit.



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1 We would like her live testimony, and I don't think that  
2 testimony would take much longer at all based on her deposition  
3 and based on the scope of what she will be testifying about.

4 THE COURT: I don't mind having live testimony, but I  
5 hope it's better than the live testimony today in terms of the  
6 precision of the questions.

7 MR. COSTIN: Yes, your Honor.

8 THE COURT: And I was advocating for an affidavit  
9 because it then cabins the testimony in a discrete way and  
10 makes it easier for you, but if you want to have what we've had  
11 today, which is imprecise and far-ranging questioning beyond  
12 what I think would have been appropriate, with all due respect,  
13 we can do that.

14 When are we going to do that though because I don't  
15 want to keep the record open for very much longer. If this is  
16 all we have, we should figure out how to shoehorn this in  
17 sooner rather than later, mindful that she has some medical  
18 condition that makes her unavailable tomorrow.

19 Do you have any sense of when she would be available,  
20 Mr. Costin?

21 MR. COSTIN: Your Honor, my understanding is that she  
22 was released from the hospital on or about 22nd of February,  
23 and that she needs about two to three weeks to fully recover  
24 from her medical issue. So, I would say two weeks on the safe  
25 side.

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1 THE COURT: Two weeks from now?

2 MR. COSTIN: Approximately, your Honor.

3 THE COURT: So we're talking about the earliest that  
4 she could testify effectively would be the week of the 19th.  
5 Next week is the week of the 5th, and then the week of the  
6 12th, that's two weeks from now. So I'm looking at week of the  
7 19th.

8 MR. COSTIN: Your Honor, I think that's very safe.

9 THE COURT: And we need, effectively, an hour, let's  
10 say, correct?

11 MR. COSTIN: Yes.

12 THE COURT: Let me ask this question: Would it make  
13 sense and be efficient to have the parties make any post trial  
14 submissions they want to make during this interim period or do  
15 you want to wait until her testimony, given that we know --  
16 really given that she has been deposed and what the proffer is,  
17 what it's going to be, and what your line of cross is going to  
18 be. I would be inclined to have you be working on any post  
19 trial submissions you want to make.

20 My concern about bench trials like this is the longer  
21 you put them out, then the longer it becomes for me to have to  
22 remember everything. If we say we don't want to submit our  
23 post trial submissions until after this testimony, I think it  
24 just will delay things. I mean, I don't know what post trial  
25 submissions necessarily you're going to want to make, but I'm

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1 happy to have anything you want to submit.

2 What are your thoughts, Ms. Isaacson?

3 MS. ISAACSON: We are OK submitting it in the interim.

4 THE COURT: Mr. Costin?

5 MR. COSTIN: I concur, your Honor.

6 THE COURT: So why don't we look toward the end of  
7 that week just in an abundance of caution. What do we have on  
8 the 22nd or 23rd?

9 Wednesday, the 21st and Friday, the 23rd are open on  
10 the calendar. We could do those in the morning of either of  
11 those days. Do either or both of those work for counsel?

12 MR. COSTIN: March 21, that Wednesday works fine, your  
13 Honor.

14 THE COURT: Ms. Isaacson, and Mr. Clark the 21st in  
15 the morning at 10:00, does that work?

16 MS. ISAACSON: Yes, I believe I might have an initial  
17 conference with you in the afternoon.

18 THE COURT: You have an initial conference with me?

19 MS. ISAACSON: I think so.

20 THE COURT: We'll spend the day together.

21 MS. ISAACSON: OK.

22 THE COURT: Is that right because we don't seem to  
23 have anything listed right now. What case is that?

24 MS. ISAACSON: Patron. Maybe it is before the  
25 district judge.

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1 THE COURT: In any event, March 21st at 10:00.

2 MR. COSTIN: Yes.

3 THE COURT: How about this, can I ask you to make  
4 whatever post trial submissions us want to make from tomorrow,  
5 meaning the 16th?

6 MS. ISAACSON: Yes.

7 MR. COSTIN: Yes, your Honor.

8 THE COURT: Then we will treat the 21st both as we'll  
9 take the last witness and any closing arguments you want to  
10 make and any questions I may have about your submissions, and  
11 then the record will be closed at that time.

12 If I can make findings and conclusions on the record  
13 then, I will. If not, I will simply take it on submission and  
14 try to get a decision out as promptly as possible. I think  
15 that's the most efficient way to proceed.

16 Do you anticipate, Ms. Isaacson, other than  
17 Mr. Costin's remaining witness to having some sort of rebuttal  
18 case and any witnesses for that? Obviously, if there is, we  
19 can accommodate that on the 21st, but what would that entail if  
20 anything?

21 MS. ISAACSON: It would basically just be the  
22 plaintiff, if anything, as a rebuttal witness.

23 THE COURT: OK. Well, to the extent you are going to  
24 call him again, that would obviously have to take place at that  
25 time and you should prepare for that.

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1 MS. ISAACSON: OK.

2 THE COURT: Is there anything else we need to do for  
3 today?

4 MS. ISAACSON: No, your Honor.

5 THE COURT: Mr. Costin.

6 MR. COSTIN: No, your Honor. Thank you very much.

7 THE COURT: Thank you all very much. Have a good  
8 night.

9 Thanks to the witnesses. Thank you to the  
10 interpreters. Thank you to the court reporter. Thank you to  
11 my staff.

12 Have a good night. I'll see you all in a few weeks.

13 (Trial continued to March 21, 2018 at 10:00 a.m.)  
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